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RECORD, CASE No. 14,665.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

TERM No. 1191.

PETER J. CLAASSEN, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED MAY 28, 1891.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the circuit court of the United States for the southern district of New York, Greeting:

Because in the records and proceedings and also in the rendition of the judgment of a plea which is in the said circuit court, before you, between The United States of America, plaintiff, and Peter J. Claassen, defendant, a manifest error hath happened, to the great damage of the said Peter J. Claassen, as by his complaint appears, we, being willing that the error, if any hath been, should be duly corrected and full and speedy justice done to the party aforesaid in this behalf, do command you, if judgment be therein given, that, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the second Monday of April, eighteen hundred and ninety-one, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done thereon to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 21st day of March, in the year of our Lord one thousand eight hundred and ninety-one.

Seal of the Supreme Court of the United States.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

The foregoing writ is hereby allowed.
March 21st, 1891.

SAM'L BLATCHFORD,
Associate Justice of the Supreme Court of the United States.

This writ is to operate as a supersedeas and stay of execution, with leave to the United States to move the Supreme Court of the United States, on notice, to vacate the stay as having been granted without authority of law.

SAM'L BLATCHFORD,
Associate Justice of the Supreme Court of the United States.

2 UNITED STATES OF AMERICA, *Southern District of New York,* } *ss:*

I, John A. Shields, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, by virtue of the foregoing writ of error and in obedience thereto, do hereby certify that the following pages, numbered from four to 137, inclusive, contain a true and complete transcript of the records

and proceedings had in said court in the case of Peter J. Claassen, plaintiff in error, against The United States of America, defendant in error, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this 27th day of May, in the year of our Lord one thousand eight hundred and ninety-one, and of the Independence of the United States the one hundred and fifteenth.

Seal of U. S. Circuit Court, South. Dist. New York.

JOHN A. SHIELDS, *Clerk.*

3 [Endorsed:] U. S. Supreme Court. Peter J. Claassen, plaintiff in error, against The United States of America, defendant in error. Writ of error. Hector M. Hitchings, attorney for plaintiff in error, 132 Nassau street, New York city. To ——, Esq., attorney for ——. Service of a copy of the within writ of error is hereby admitted. Dated March 23, 1891. Edward Mitchell, attorney for def't in error. U. S. circuit court. Filed Mar. 23, 1891. John A. Shields, clerk.

4 Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit.

At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, begun and held in the city of New York, within and for the district and circuit aforesaid, on the twelfth of March, in the year of our Lord one thousand eight hundred and ninety, and continued by adjournment to and including the first day of April, in the year of our Lord one thousand eight hundred and ninety.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

The jurors of the United States of America within and for the district and circuit aforesaid on their oath present that Peter J. Claassen, late of the city and county of New York, in the district and circuit aforesaid, yeoman, heretofore, to wit, on the twenty-third day of January, in the year of our Lord one thousand eight hundred and ninety, at the southern district of New York and within

5 the jurisdiction of this court, he, the said Peter J. Claassen, being then and there the president of a certain national banking association then and there known and designated as the Sixth National Bank of the City of New York, which said association had been theretofore created and organized under and by virtue of an act of Congress entitled "An act to provide a national currency secured by a pledge of United States bonds and to provide for the circulation and redemption thereof," approved June third, in the year of our Lord one thousand eight hundred and sixty-four, and which said association was then and there acting and carrying on a banking business at the city of New York, in the said district, under the said act of Congress and acts amendatory thereof, did, by

virtue of his said office and employment and while he was so employed and acting as such president as aforesaid, receive and take into his possession certain funds and credits, to wit:

Ten bonds and written obligations of the Saint Louis and San Francisco Railway Company of the kind called general mortgage bonds of the denomination and value of one thousand dollars each.

Thirty-one bonds and written obligations of the New York Elevated Railroad Company of the kind called first-mortgage bonds of the denomination and value of one thousand dollars each.

Fifteen bonds and written obligations of the Canada Southern Railway Company of the kind called first-mortgage bonds of the denomination and value of one thousand dollars each.

Twenty bonds and written obligations of the Chicago, Milwaukee and Saint Paul Railway Company of the kind called terminal bonds of the denomination and value of one thousand dollars each.

Twenty bonds and written obligations of the Chicago, Milwaukee and Saint Paul Railway Company of the kind called consolidated bonds of the denomination and value of one thousand dollars each.

Thirty bonds and written obligations of the Milwaukee and Saint Paul Railway Company of the kind called consolidated bonds of the denomination and value of one thousand dollars each.

Ten bonds and written obligations of the Milwaukee and Saint Paul Railway Company of the kind called La Crosse Division bonds of the denomination and value of one thousand dollars each.

Ten bonds and written obligations of the Spokane Falls and Northern railroad of the kind called first-mortgage bonds of the denomination and value of one thousand dollars each.

Sixty bonds and written obligations of the Union Pacific Railway Company of the kind called first-mortgage bonds of the denomination and value of one thousand dollars each.

Fifty-five bonds and written obligations of the Metropolitan Elevated Railway Company of the kind called first-mortgage bonds of the denomination and value of one thousand dollars each.

Fifteen bonds and written obligations of the Central Pacific Railway Company of the kind called first-mortgage bonds of the denomination and value of one thousand dollars each.

Forty-six bonds and written obligations of the Union Pacific Railway Company of the kind called collateral trust bonds of the denomination and value of one thousand dollars each.

6 Ten bonds and written obligations of the Cœur de Alene Railway Company and Navigation Company of the kind called general first-mortgage bonds of the denomination and value of one thousand dollars each.

Ten bonds and written obligations of the Saint Paul and Sioux City railroad of the kind called first-mortgage bonds of the denomination and value of one thousand dollars each.

Twenty-five bonds and written obligations of the Central Pacific railway, San Joaquin Railroad Company, of the kind called first-mortgage bonds of the denomination and value of one thousand dollars each.

Ten bonds and written obligations of the Saint Paul, Minneapolis

and Manitoba Railway Company of the kind called second-mortgage bonds of the denomination and value of one thousand dollars each.

Twenty-five bonds and written obligations of the Chicago, Burlington and Quincy Railroad Company of the kind called sinking-fund bonds of the denomination and value of one thousand dollars each.

Forty-six bonds and written obligations of the Chicago and Northwestern Railway Company of the kind called debenture bonds of the denomination and value of one thousand dollars each.

Sixty bonds and written obligations of the Chicago, Burlington and Quincy Railroad Company of the kind called debenture bonds of the denomination and value of one thousand dollars each.

Ten bonds and written obligations of the Lake Shore and Michigan Southern Railway Company of the kind called second-mortgage bonds of the denomination and value of one thousand dollars each.

Ten bonds and written obligations of the Chicago and Northwestern Railway Company of the kind called gold first-mortgage bonds of the denomination and value of one thousand dollars each.

Ten bonds and written obligations of the New York, Lake Erie and Western Railway Company of the kind called funded bonds of the denomination and value of one thousand dollars each.

Ten bonds and written obligations of the Chicago, Saint Paul, Minneapolis and Omaha Railway Company of the kind called second-mortgage bonds of the denomination and value of one thousand dollars each.

Five bonds and written obligations of the Burlington, Cedar Rapids and Northern Railway Company of the kind called first-mortgage bonds of the denomination and value of one thousand dollars each.

Four bonds and written obligations of the Texas Pacific Railway Company of the kind called second-mortgage bonds of the denomination and value of one thousand dollars each.

Forty-five bonds and written obligations of the Oregon Short Line Railway Company of the kind called first-mortgage bonds of the denomination and value of one thousand dollars each.

Ten bonds and written obligations of the Louisville, New Albany and Chicago Railway Company of the kind called first-mortgage bonds of the denomination and value of one thousand dollars each.

Ten bonds and written obligations of the Richmond and West Point Terminal Railway and Warehouse Company of the kind called consolidated first-mortgage gold trust bonds of the denomination and value of one thousand dollars each, then and there being the property of the said association, and which he held for and in the name and on account of the said association, and did then and there, wilfully and unlawfully and with intent to injure and defraud the said association, embezzle the said bonds and written obligations and convert them to his own use, against the peace of the United

States and their dignity and contrary to the form of the statute of the said United States in such case made and provided.

7 *Second Count.*

And the jurors aforesaid on their oath aforesaid do further present that Peter J. Claassen, late of the city and county of New York, in the district and circuit aforesaid, yeoman, heretofore, to wit, on the twenty-third day of January, in the year of our Lord one thousand eight hundred and ninety, at the southern district of New York and within the jurisdiction of this court, he, the said Peter J. Claassen, being then and there an agent of a certain national banking association then and there known and designated as the Sixth National Bank of the City of New York, which said association had been theretofore created and organized under and by virtue of an act of Congress entitled "An act to provide a national currency secured by a pledge of United States bonds and to provide for the circulation and redemption thereof," approved June third, in the year of our Lord one thousand eight hundred and sixty-four, and which said association was then and there acting and carrying on a banking business at the city of New York, in said district, under the said act of Congress and acts amendatory thereof, did, by virtue of his said employment and while he was so employed as aforesaid, receive and take into his possession certain funds and credits, to wit:

Ten bonds and written obligations of the Saint Louis and San Francisco Railway Company of the kind called general mortgage bonds of the denomination and value of one thousand dollars each.

Thirty-one bonds and written obligations of the New York Elevated Railroad Company of the kind called first-mortgage bonds of the denomination and value of one thousand dollars each.

Fifteen bonds and written obligations of the Canada Southern Railway Company of the kind called first-mortgage bonds of the denomination and value of one thousand dollars each.

Twenty bonds and written obligations of the Chicago, Milwaukee and Saint Paul Railway Company of the kind called terminal bonds of the denomination and value of one thousand dollars each.

Twenty bonds and written obligations of the Chicago, Milwaukee and Saint Paul Railway Company of the kind called consolidated bonds of the denomination and value of one thousand dollars each.

Thirty bonds and written obligations of the Milwaukee and Saint Paul Railway Company of the kind called consolidated bonds of the denomination and value of one thousand dollars each.

Ten bonds and written obligations of the Milwaukee and Saint Paul Railway Company of the kind called La Crosse Division bonds of the denomination and value of one thousand dollars each.

and Manitoba Railway Company of the kind called second-mortgage bonds of the denomination and value of one thousand dollars each.

Twenty-five bonds and written obligations of the Chicago, Burlington and Quincy Railroad Company of the kind called sinking-fund bonds of the denomination and value of one thousand dollars each.

Forty-six bonds and written obligations of the Chicago and Northwestern Railway Company of the kind called debenture bonds of the denomination and value of one thousand dollars each.

Sixty bonds and written obligations of the Chicago, Burlington and Quincy Railroad Company of the kind called debenture bonds of the denomination and value of one thousand dollars each.

Ten bonds and written obligations of the Lake Shore and Michigan Southern Railway Company of the kind called second-mortgage bonds of the denomination and value of one thousand dollars each.

Ten bonds and written obligations of the Chicago and Northwestern Railway Company of the kind called gold first-mortgage bonds of the denomination and value of one thousand dollars each.

Ten bonds and written obligations of the New York, Lake Erie and Western Railway Company of the kind called funded bonds of the denomination and value of one thousand dollars each.

Ten bonds and written obligations of the Chicago, Saint Paul, Minneapolis and Omaha Railway Company of the kind called second-mortgage bonds of the denomination and value of one thousand dollars each.

Five bonds and written obligations of the Burlington, Cedar Rapids and Northern Railway Company of the kind called first-mortgage bonds of the denomination and value of one thousand dollars each.

Four bonds and written obligations of the Texas Pacific Railway Company of the kind called second-mortgage bonds of the denomination and value of one thousand dollars each.

Forty-five bonds and written obligations of the Oregon Short Line Railway Company of the kind called first-mortgage bonds of the denomination and value of one thousand dollars each.

Ten bonds and written obligations of the Louisville, New Albany and Chicago Railway Company of the kind called first-mortgage bonds of the denomination and value of one thousand dollars each.

Ten bonds and written obligations of the Richmond and West Point Terminal Railway and Warehouse Company of the kind called consolidated first-mortgage gold trust bonds of the denomination and value of one thousand dollars each, then and there being the property of the said association, and which he held for and in the name and on account of the said association, and did then and there, wilfully and unlawfully and with intent to injure and defraud the said association, embezzle the said bonds and written obligations and convert them to his own use, against the peace of the United

States and their dignity and contrary to the form of the statute of the said United States in such case made and provided.

7 *Second Count.*

And the jurors aforesaid on their oath aforesaid do further present that Peter J. Claassen, late of the city and county of New York, in the district and circuit aforesaid, yeoman, heretofore, to wit, on the twenty-third day of January, in the year of our Lord one thousand eight hundred and ninety, at the southern district of New York and within the jurisdiction of this court, he, the said Peter J. Claassen, being then and there an agent of a certain national banking association then and there known and designated as the Sixth National Bank of the City of New York, which said association had been theretofore created and organized under and by virtue of an act of Congress entitled "An act to provide a national currency secured by a pledge of United States bonds and to provide for the circulation and redemption thereof," approved June third, in the year of our Lord one thousand eight hundred and sixty-four, and which said association was then and there acting and carrying on a banking business at the city of New York, in said district, under the said act of Congress and acts amendatory thereof, did, by virtue of his said employment and while he was so employed as aforesaid, receive and take into his possession certain funds and credits, to wit:

Ten bonds and written obligations of the Saint Louis and San Francisco Railway Company of the kind called general mortgage bonds of the denomination and value of one thousand dollars each.

Thirty-one bonds and written obligations of the New York Elevated Railroad Company of the kind called first-mortgage bonds of the denomination and value of one thousand dollars each.

Fifteen bonds and written obligations of the Canada Southern Railway Company of the kind called first-mortgage bonds of the denomination and value of one thousand dollars each.

Twenty bonds and written obligations of the Chicago, Milwaukee and Saint Paul Railway Company of the kind called terminal bonds of the denomination and value of one thousand dollars each.

Twenty bonds and written obligations of the Chicago, Milwaukee and Saint Paul Railway Company of the kind called consolidated bonds of the denomination and value of one thousand dollars each.

Thirty bonds and written obligations of the Milwaukee and Saint Paul Railway Company of the kind called consolidated bonds of the denomination and value of one thousand dollars each.

Ten bonds and written obligations of the Milwaukee and Saint Paul Railway Company of the kind called La Crosse Division bonds of the denomination and value of one thousand dollars each.

Ten bonds and written obligations of the Spokane Falls and Northern railroad of the kind called first-mortgage bonds of the denomination and value of one thousand dollars each.

Sixty bonds and written obligations of the Union Pacific Railway Company of the kind called first-mortgage bonds of the denomination and value of one thousand dollars each.

Fifty-five bonds and written obligations of the Metropolitan Elevated Railway Company of the kind called first-mortgage bonds of the denomination and value of one thousand dollars each.

Fifteen bonds and written obligations of the Central Pacific Railway Company of the kind called first-mortgage bonds of the denomination and value of one thousand dollars each.

Forty-six bonds and written obligations of the Union Pacific Railway Company of the kind called collateral trust bonds of the denomination and value of one thousand dollars each.

8 Ten bonds and written obligations of the Cœur de Alene Railway Company and Navigation Company of the kind called general first-mortgage bonds of the denomination and value of one thousand dollars each.

Ten bonds and written obligations of the Saint Paul and Sioux City railroad of the kind called first-mortgage bonds of the denomination and value of one thousand dollars each.

Twenty-five bonds and written obligations of the Central Pacific railway, San Joaquin Railroad Company, of the kind called first-mortgage bonds of the denomination and value of one thousand dollars each.

Ten bonds and written obligations of the Saint Paul, Minneapolis and Manitoba Railway Company of the kind called second-mortgage bonds of the denomination and value of one thousand dollars each.

Twenty-five bonds and written obligations of the Chicago, Burlington and Quincy Railroad Company of the kind called sinking-fund bonds of the denomination and value of one thousand dollars each.

Forty-six bonds and written obligations of the Chicago and Northwestern Railway Company of the kind called debenture bonds of the denomination and value of one thousand dollars each.

Sixty bonds and written obligations of the Chicago, Burlington and Quincy Railroad Company of the kind called debenture bonds of the denomination and value of one thousand dollars each.

Ten bonds and written obligations of the Lake Shore and Michigan Southern Railway Company of the kind called second-mortgage bonds of the denomination and value of one thousand dollars each.

Ten bonds and written obligations of the Chicago and Northwestern Railway Company of the kind called gold first-mortgage bonds of the denomination and value of one thousand dollars each.

Ten bonds and written obligations of the New York, Lake Erie and Western Railway Company of the kind called funded bonds of the denomination and value of one thousand dollars each.

Ten bonds and written obligations of the Chicago, Saint Paul,

Minneapolis and Omaha Railway Company of the kind called second-mortgage bonds of the denomination and value of one thousand dollars each.

Five bonds and written obligations of the Burlington, Cedar Rapids and Northern Railway Company of the kind called first-mortgage bonds of the denomination and value of one thousand dollars each.

Four bonds and written obligations of the Texas Pacific Railway Company of the kind called second-mortgage bonds of the denomination and value of one thousand dollars each.

Forty-five bonds and written obligations of the Oregon Short Line Railway Company of the kind called first-mortgage bonds of the denomination and value of one thousand dollars each.

Ten bonds and written obligations of the Louisville, New Albany and Chicago Railway Company of the kind called first-mortgage bonds of the denomination and value of one thousand dollars each.

Ten bonds and written obligations of the Richmond and West Point Terminal Railway and Warehouse Company of the kind called consolidated first-mortgage gold trust bonds of the denomination and value of one thousand dollars each, then and there being the property of the said association, and which he held for and in the name and on account of the said association, and did then and there, wilfully and unlawfully and with intent to injure and defraud the said association, embezzle the said bonds and written obligations and convert them to his own use, against the peace of the United States and their dignity and contrary to the form of the statute of the said United States in such case made and provided.

9 *Third Count.*

And the jurors aforesaid on their oath aforesaid do further present that Peter J. Claassen, late of the city and county of New York, in the district and circuit aforesaid, yeoman, heretofore, to wit, on the twenty-third day of January, in the year of our Lord one thousand eight hundred and ninety, at the southern district of New York and within the jurisdiction of this court, being then and there the president of a certain national banking association then and there known and designated as the Sixth National Bank of the City of New York, which said association had been theretofore created and organized under and by virtue of an act of Congress entitled "An act to provide a national currency, secured by a pledge of United States bonds and to provide for the circulation and redemption thereof," approved June third, in the year of our Lord one thousand eight hundred and sixty-four, and which said association was then and there acting and carrying on a banking business at the city of New York, in the said district, under the said act of Congress and acts amendatory thereof, did, unlawfully and wilfully and without the knowledge and consent of the said association and its board of directors and with intent to injure and defraud the said association, abstract and convert to the use, benefit, and advantage of himself, the said Peter J. Claassen, and divers other per-

sons, to the jurors aforesaid as yet unknown, other than the said association, certain funds and credits then and there being the property of the said association—that is to say:

Ten bonds and written obligations of the Saint Louis and San Francisco Railway Company of the kind called general mortgage bonds of the denomination and value of one thousand dollars each.

Thirty-one bonds and written obligations of the New York Elevated Railroad Company of the kind called first-mortgage bonds of the denomination and value of one thousand dollars each.

Fifteen bonds and written obligations of the Canada Southern Railway Company of the kind called first-mortgage bonds of the denomination and value of one thousand dollars each.

Twenty bonds and written obligations of the Chicago, Milwaukee and Saint Paul Railway Company of the kind called terminal bonds of the denomination and value of one thousand dollars each.

Twenty bonds and written obligations of the Chicago, Milwaukee and Saint Paul Railway Company of the kind called consolidated bonds of the denomination and value of one thousand dollars each.

Thirty bonds and written obligations of the Milwaukee and Saint Paul Railway Company of the kind called consolidated bonds of the denomination and value of one thousand dollars each.

Ten bonds and written obligations of the Milwaukee and Saint Paul Railway Company of the kind called La Crosse Division bonds of the denomination and value of one thousand dollars each.

Ten bonds and written obligations of the Spokane Falls and Northern railroad of the kind called first-mortgage bonds of the denomination and value of one thousand dollars each.

Sixty bonds and written obligations of the Union Pacific Railway Company of the kind called first-mortgage bonds of the denomination and value of one thousand dollars each.

Fifty-five bonds and written obligations of the Metropolitan Elevated Railway Company of the kind called first-mortgage bonds of the denomination and value of one thousand dollars each.

Fifteen bonds and written obligations of the Central Pacific Railway Company of the kind called first-mortgage bonds of the denomination and value of one thousand dollars each.

Forty-six bonds and written obligations of the Union Pacific Railway Company of the kind called collateral trust bonds of the denomination and value of one thousand dollars each.

Ten bonds and written obligations of the Cœur de Alene Railway Company and Navigation Company of the kind called general first-mortgage bonds of the denomination and value of one thousand dollars each.

Ten bonds and written obligations of the Saint Paul and Sioux City railroad of the kind called first-mortgage bonds of the denomination and value of one thousand dollars each.

Twenty-five bonds and written obligations of the Central Pacific railway, San Joaquin Railroad Company, of the kind called first-mortgage bonds of the denomination and value of one thousand dollars each.

Ten bonds and written obligations of the Saint Paul, Minneapo-

lis and Manitoba Railway Company of the kind called second-mortgage bonds of the denomination and value of one thousand dollars each.

Twenty-five bonds and written obligations of the Chicago, Burlington and Quincy Railroad Company of the kind called sinking-fund bonds of the denomination and value of one thousand dollars each.

Forty-six bonds and written obligations of the Chicago and Northwestern Railway Company of the kind called debenture bonds of the denomination and value of one thousand dollars each.

Sixty bonds and written obligations of the Chicago, Burlington and Quincy Railroad Company of the kind called debenture bonds of the denomination and value of one thousand dollars each.

Ten bonds and written obligations of the Lake Shore and Michigan Southern Railway Company of the kind called second-mortgage bonds of the denomination and value of one thousand dollars each.

Ten bonds and written obligations of the Chicago and Northwestern Railway Company of the kind called gold first-mortgage bonds of the denomination and value of one thousand dollars each.

Ten bonds and written obligations of the New York, Lake Erie and Western Railway Company of the kind called funded bonds of the denomination and value of one thousand dollars each.

Ten bonds and written obligations of the Chicago, Saint Paul, Minneapolis and Omaha Railway Company of the kind called second-mortgage bonds of the denomination and value of one thousand dollars each.

Five bonds and written obligations of the Burlington, Cedar Rapids and Northern Railway Company of the kind called first-mortgage bonds of the denomination and value of one thousand dollars each.

Four bonds and written obligations of the Texas Pacific Railway Company of the kind called second-mortgage bonds of the denomination and value of one thousand dollars each.

Forty-five bonds and written obligations of the Oregon Short Line Railway Company of the kind called first-mortgage bonds of the denomination and value of one thousand dollars each.

Ten bonds and written obligations of the Louisville, New Albany and Chicago Railway Company of the kind called first-mortgage bonds of the denomination and value of one thousand dollars each.

Ten bonds and written obligations of the Richmond and West Point Terminal Railway and Warehouse Company of the kind called consolidated first-mortgage gold trust bonds of the denomination and value of one thousand dollars each; against the peace of the United States and their dignity, and contrary to the form of the statute of the said United States in such case made and provided.

11 *Fourth Count.*

And the jurors aforesaid on their oath aforesaid do further present that Peter J. Claassen, late of the city and county of New York,

in the district and circuit aforesaid, yeoman, heretofore, to wit, on the twenty-third day of January, in the year of our Lord one thousand eight hundred and ninety, at the southern district of New York and within the jurisdiction of this court, being then and there an agent of a certain national banking association then and there known and designated as the Sixth National Bank of the City of New York, which said association had been theretofore created and organized under and by virtue of an act of Congress entitled "An act to provide a national currency secured by a pledge of United States bonds and to provide for the circulation and redemption thereof," approved June third, in the year of our Lord one thousand eight hundred and sixty-four, and which said association was then and there acting and carrying on a banking business at the city of New York, in the said district, under the said act of Congress and acts amendatory thereof, did, unlawfully and wilfully and without the knowledge and consent of the said association and its board of directors and with intent to injure and defraud the said association, abstract and convert to the use, benefit, and advantage of himself, the said Peter J. Claassen, and divers other persons, to the jurors aforesaid as yet unknown, other than the said association, certain funds and credits then and there being the property of the said association—that is to say:

Ten bonds and written obligations of the Saint Louis and San Francisco Railway Company of the kind called general mortgage bonds of the denomination and value of one thousand dollars each.

Thirty-one bonds and written obligations of the New York Elevated Railroad Company of the kind called first-mortgage bonds of the denomination and value of one thousand dollars each.

Fifteen bonds and written obligations of the Canada Southern Railway Company of the kind called first-mortgage bonds of the denomination and value of one thousand dollars each.

Twenty bonds and written obligations of the Chicago, Milwaukee and Saint Paul Railway Company of the kind called terminal bonds of the denomination and value of one thousand dollars each.

Twenty bonds and written obligations of the Chicago, Milwaukee and Saint Paul Railway Company of the kind called consolidated bonds of the denomination and value of one thousand dollars each.

Thirty bonds and written obligations of the Milwaukee and Saint Paul Railway Company of the kind called consolidated bonds of the denomination and value of one thousand dollars each.

Ten bonds and written obligations of the Milwaukee and Saint Paul Railway Company of the kind called La Crosse Division bonds of the denomination and value of one thousand dollars each.

Ten bonds and written obligations of the Spokane Falls and Northern railroad of the kind called first-mortgage bonds of the denomination and value of one thousand dollars each.

Sixty bonds and written obligations of the Union Pacific Railway Company of the kind called first mortgage bonds of the denomination and value of one thousand dollars each.

Fifty-five bonds and written obligations of the Metropolitan Elevated Railway Company of the kind called first-mortgage bonds of the denomination and value of one thousand dollars each.

Fifteen bonds and written obligations of the Central Pacific Railway Company of the kind called first-mortgage bonds of the denomination and value of one thousand dollars each.

12 Forty-six bonds and written obligations of the Union Pacific Railway Company of the kind called collateral trust bonds of the denomination and value of one thousand dollars each.

Ten bonds and written obligations of the Cœur de Alene Railway Company and Navigation Company of the kind called general first-mortgage bonds of the denomination and value of one thousand dollars each.

Ten bonds and written obligations of the St. Paul and Sioux City railroad of the kind called first-mortgage bonds of the denomination and value of one thousand dollars each.

Twenty-five bonds and written obligations of the Central Pacific railway, San Joaquin Railroad Company, of the kind called first-mortgage bonds of the denomination and value of one thousand dollars each.

Ten bonds and written obligations of the St. Paul, Minneapolis and Manitoba Railway Company of the kind called second-mortgage bonds of the denomination and value of one thousand dollars each.

Twenty-five bonds and written obligations of the Chicago, Burlington and Quincy Railroad Company of the kind called sinking-fund bonds of the denomination and value of one thousand dollars each.

Forty-six bonds and written obligations of the Chicago and Northwestern Railway Company of the kind called debenture bonds of the denomination and value of one thousand dollars each.

Sixty bonds and written obligations of the Chicago, Burlington and Quincy Railroad Company of the kind called debenture bonds of the denomination and value of one thousand dollars each.

Ten bonds and written obligations of the Lake Shore and Michigan Southern Railway Company of the kind called second-mortgage bonds of the denomination and value of one thousand dollars each.

Ten bonds and written obligations of the Chicago and Northwestern Railway Company of the kind called gold first-mortgage bonds of the denomination and value of one thousand dollars each.

Ten bonds and written obligations of the New York, Lake Erie and Western Railway Company of the kind called funded bonds of the denomination and value of one thousand dollars each.

Ten bonds and written obligations of the Chicago, St. Paul, Minneapolis and Omaha Railway Company of the kind called second-mortgage bonds of the denomination and value of one thousand dollars each.

Five bonds and written obligations of the Burlington, Cedar Rapids and Northern Railway Company of the kind called first-

mortgage bonds of the denomination and value of one thousand dollars each.

Four bonds and written obligations of the Texas Pacific Railway Company of the kind called second-mortgage bonds of the denomination and value of one thousand dollars each.

Forty-five bonds and written obligations of the Oregon Short Line Railway Company of the kind called first-mortgage bonds of the denomination and value of one thousand dollars each.

Ten bonds and written obligations of the Louisville, New Albany and Chicago Railway Company of the kind called first-mortgage bonds of the denomination and value of one thousand dollars each.

Ten bonds and written obligations of the Richmond and West Point Terminal Railway and Warehouse Company of the kind called consolidated first-mortgage gold trust bonds of the denomination and value of one thousand dollars each; against the peace of the United States and their dignity and contrary to the form of the statute of the said United States in such case made and provided.

13 *Fifth Count.*

And the jurors aforesaid on their oath aforesaid do further present that Peter J. Claassen, late of the city and county of New York, in the district and circuit aforesaid, yeoman, heretofore, to wit, on the twenty-third day of January, in the year of our Lord one thousand eight hundred and ninety, at the southern district of New York and within the jurisdiction of this court, he, the said Peter J. Claassen, being then and there the president of a certain national banking association then and there known and designated as the Sixth National Bank of the City of New York, which said association had been theretofore created and organized under and by virtue of an act of Congress entitled "An act to provide a national currency secured by a pledge of United States bonds and to provide for the circulation and redemption thereof," approved June third, in the year of our Lord one thousand eight hundred and sixty-four, and which said association was then and there acting and carrying on a banking business at the city of New York, in said district, under the said act of Congress and acts amendatory thereof, did, by virtue of his said office and employment and while he was so employed and acting as such president as aforesaid, receive and take into his possession certain moneys, funds, and credits then and there being the property of the said association, to wit, the sum of six hundred and eighty-three thousand dollars, and which he held for and in the name and on account of said association, and did then and there, wilfully and unlawfully and with intent to injure and defraud the said association, embezzle the said sum of six hundred and eighty-three thousand dollars and convert it to his own use, against the peace of the United States and their dignity and contrary to the form of the statute of the said United States in such case made and provided.

14 *Sixth Count.*

And the jurors aforesaid on their oath aforesaid do further present that Peter J. Claassen, late of the city and county of New York, in the district and circuit aforesaid, yeoman, heretofore, to wit, on the twenty-third day of January, in the year of our Lord one thousand eight hundred and ninety, at the southern district of New York and within the jurisdiction of this court, he, the said Peter J. Claassen, being then and there an agent of a certain national banking association then and there known and designated as the Sixth National Bank of the City of New York, which said association had been theretofore created and organized under and by virtue of an act of Congress entitled "An act to provide a national currency secured by a pledge of United States bonds and to provide for the circulation and redemption thereof," approved June third, in the year of our Lord one thousand eight hundred and sixty-four, and which said association was then and there acting and carrying on a banking business at the city of New York, in said district, under the said act of Congress and acts amendatory thereof, did, by virtue of his said employment and while he was so employed as aforesaid, receive and take into his possession certain moneys, funds, and credits then and there being the property of the said association, to wit, the sum of six hundred and eighty-three thousand dollars, and which he held for and in the name and on account of said association, and did then and there, wilfully and unlawfully and with intent to injure and defraud the said association, embezzle the said sum of six hundred and eighty-three thousand dollars and convert it to his own use, against the peace of the United States and their dignity and contrary to the form of the statute of the said United States in such case made and provided.

15 *Seventh Count.*

And the jurors aforesaid on their oath aforesaid do further present that Peter J. Claassen, late of the city and county of New York, in the district and circuit aforesaid, yeoman, heretofore, to wit, on the twenty-third day of January, in the year of our Lord one thousand eight hundred and ninety, at the southern district of New York and within the jurisdiction of this court, being then and there the president of a certain national banking association then and there known and designated as the Sixth National Bank of the City of New York, which said association had been theretofore created and organized under and by virtue of an act of Congress entitled "An act to provide a national currency secured by a pledge of United States bonds and to provide for the circulation and redemption thereof," approved June third, in the year of our Lord one thousand eight hundred and sixty-four, and which said association was then and there acting and carrying on a banking business at the city of New York, in the said district, under the said act of Congress and acts amendatory thereof, did, unlawfully and wilfully and without the knowledge and consent of the said association and its

board of directors and with intent to injure and defraud the said association, abstract and convert to the use, benefit, and advantage of himself, the said Peter J. Claassen, and divers other persons, to the jurors aforesaid as yet unknown, other than the said association, certain moneys, funds, and credits then and there being the property of the said association, of the amount and value of six hundred and eighty-three thousand dollars, against the peace of the United States and their dignity and contrary to the form of the statute of the said United States in such case made and provided.

16 *Eighth Count.*

And the jurors aforesaid on their oath aforesaid do further present that Peter J. Claassen, late of the city and county of New York, in the district and circuit aforesaid, yeoman, heretofore, to wit, on the twenty-third day of January, in the year of our Lord one thousand eight hundred and ninety, at the southern district of New York and within the jurisdiction of this court, being then and there an agent of a certain national banking association then and there known and designated as the Sixth National Bank of the City of New York, which said association had been theretofore created and organized under and by virtue of an act of Congress entitled "An act to provide a national currency secured by a pledge of United States bonds and to provide for the circulation and redemption thereof," approved June third, in the year of our Lord one thousand eight hundred and sixty-four, and which said association was then and there acting and carrying on a banking business at the city of New York, in the said district, under the said act of Congress and acts amendatory thereof, did, unlawfully and wilfully and without the knowledge and consent of the said association and its board of directors and with intent to injure and defraud the said association, abstract and convert to the use, benefit, and advantage of himself, the said Peter J. Claassen, and divers other persons, to the jurors aforesaid as yet unknown, other than the said association, certain moneys, funds, and credits then and there being the property of the said association, of the amount and value of six hundred and eighty-three thousand dollars, against the peace of the United States and their dignity and contrary to the form of the statute of the said United States in such case made and provided.

17 *Ninth Count.*

And the jurors aforesaid on their oath aforesaid do further present that Peter J. Claassen, late of the city and county of New York, in the district and circuit aforesaid, yeoman, heretofore, to wit, on the twenty-third day of January, in the year of our Lord one thousand eight hundred and ninety, at the southern district of New York and within the jurisdiction of this court, being then and there the president of a certain national banking association then and there known and designated as the Sixth National Bank of the City of New York, which said association had been theretofore created and

organized under and by virtue of an act of Congress entitled "An act to provide a national currency secured by a pledge of United States bonds and to provide for the circulation and redemption thereof," approved June third, in the year of our Lord one thousand eight hundred and sixty-four, and which said association was then and there acting and carrying on a banking business at the city of New York, in the said district, under the said act of Congress and acts amendatory thereof, did, wilfully and unlawfully and with intent to injure and defraud the said association, misapply and convert to the use, benefit, and advantage of himself, the said Peter J. Claassen, James A. Simmons, George H. Pell, and divers other persons, to the jurors aforesaid as yet unknown, other than the said association, certain moneys then and there being the property of the said association, to wit, the sum of four hundred and thirty-two thousand four hundred and sixty-six dollars, in the manner and by the means following—that is to say, he, the said Peter J. Claassen, being then and there such president as aforesaid, did, without the knowledge and consent of the said association and its board of directors, deliver to the said George H. Pell and did then and there authorize and direct the said George H. Pell to hypothecate certain funds and credits—that is to say:

Ten bonds and written obligations of the Saint Louis and San Francisco Railway Company of the kind called general mortgage bonds of the denomination and value of one thousand dollars each.

Thirty-one bonds and written obligations of the New York Elevated Railroad Company of the kind called first-mortgage bonds of the denomination and value of one thousand dollars each.

Fifteen bonds and written obligations of the Canada Southern Railway Company of the kind called first-mortgage bonds of the denomination and value of one thousand dollars each.

Twenty bonds and written obligations of the Chicago, Milwaukee and Saint Paul Railway Company of the kind called terminal bonds of the denomination and value of one thousand dollars each.

Twenty bonds and written obligations of the Chicago, Milwaukee and Saint Paul Railway Company of the kind called consolidated bonds of the denomination and value of one thousand dollars each.

Ten bonds and written obligations of the Cœur de Alene Railway Company and Navigation Company of the kind called general first-mortgage bonds of the denomination and value of one thousand dollars each.

Ten bonds and written obligations of the Saint Paul and Sioux City railroad of the kind called first-mortgage bonds of the denomination and value of one thousand dollars each.

Twenty-five bonds and written obligations of the Central Pacific railway, San Joaquin Railroad Company, of the kind called first-mortgage bonds of the denomination and value of one thousand dollars each.

18 Ten bonds and written obligations of the Saint Paul, Minneapolis and Manitoba Railway Company of the kind called second-mortgage bonds of the denomination and value of one thousand dollars each.

Twenty-five bonds and written obligations of the Chicago, Burlington and Quincy Railroad Company of the kind called sinking-fund bonds of the denomination and value of one thousand dollars each.

Forty-six bonds and written obligations of the Chicago and Northwestern Railway Company of the kind called debenture bonds of the denomination and value of one thousand dollars each.

Sixty bonds and written obligations of the Chicago, Burlington and Quincy Railroad Company of the kind called debenture bonds of the denomination and value of one thousand dollars each.

Ten bonds and written obligations of the Lake Shore and Michigan Southern Railway Company of the kind called second-mortgage bonds of the denomination and value of one thousand dollars each.

Ten bonds and written obligations of the Chicago and Northwestern Railway Company of the kind called gold first-mortgage bonds of the denomination and value of one thousand dollars each.

Ten bonds and written obligations of the New York, Lake Erie and Western Railway Company of the kind called funded bonds of the denomination and value of one thousand dollars each.

Ten bonds and written obligations of the Chicago, Saint Paul, Minneapolis and Omaha Railway Company of the kind called second-mortgage bonds of the denomination and value of one thousand dollars each.

Five bonds and written obligations of the Burlington, Cedar Rapids and Northern Railway Company of the kind called first-mortgage bonds of the denomination and value of one thousand dollars each.

Four bonds and written obligations of the Texas Pacific Railway Company of the kind called second-mortgage bonds of the denomination and value of one thousand dollars each.

Forty-five bonds and written obligations of the Oregon Short Line Railway Company of the kind called first-mortgage bonds of the denomination and value of one thousand dollars each.

Ten bonds and written obligations of the Louisville, New Albany and Chicago Railway Company of the kind called first-mortgage bonds of the denomination and value of one thousand dollars each.

Ten bonds and written obligations of the Richmond and West Point Terminal Railway and Warehouse Company of the kind called consolidated first-mortgage gold trust bonds of the denomination and value of one thousand dollars each.

Thirty bonds and written obligations of the Milwaukee and Saint Paul Railway Company of the kind called consolidated bonds of the denomination and value of one thousand dollars each.

Ten bonds and written obligations of the Milwaukee and Saint Paul Railway Company of the kind called La Crosse Division bonds of the denomination and value of one thousand dollars each.

Ten bonds and written obligations of the Spokane Falls and

Northern railroad of the kind called first-mortgage bonds of the denomination and value of one thousand dollars each.

Sixty bonds and written obligations of the Union Pacific Railway Company of the kind called first-mortgage bonds of the denomination and value of one thousand dollars each.

Fifty-five bonds and written obligations of the Metropolitan Elevated Railway Company of the kind called first-mortgage bonds of the denomination and value of one thousand dollars each.

Fifteen bonds and written obligations of the Central Pacific Railway Company of the kind called first-mortgage bonds of the denomination and value of one thousand dollars each.

Forty-six bonds and written obligations of the Union Pa-
19 cific Railway Company of the kind called collateral trust bonds of the denomination and value of one thousand dollars each, then and there being the property of the said association, and to obtain loans of money thereon, the redelivery of said bonds and written obligations or their equivalent in value to the said association not being then and there in any way secured, as he, the said Peter J. Claassen, then and there well knew, he, the said Peter J. Claassen, then and there unlawfully and fraudulently devising and intending that the said George H. Pell should hypothecate the said bonds and written obligations and obtain loans of money thereon, and that the said loans of money so to be obtained as aforesaid should be converted to the use, benefit, and advantage of him, the said Peter J. Claassen, the said George H. Pell, the said James A. Simmons, and the said divers other persons, to the jurors aforesaid as yet unknown, other than the said association; and that thereafter, to wit, on divers days between the twenty-third day of January and the twenty-ninth day of January, in the year of our Lord one thousand eight hundred and ninety, the said George H. Pell did, pursuant to the direction and authorization of the said Peter J. Claassen, as such president as aforesaid, hypothecate a large number of said bonds and written obligations, a more particular description of said bonds and written obligations so hypothecated as aforesaid being to the jurors aforesaid as yet unknown, and did then and there realize from such hypothecation loans of money amounting in the aggregate to the said sum of four hundred and thirty-two thousand four hundred and sixty-six dollars, which said sum of four hundred and thirty-two thousand four hundred and sixty-six dollars was on divers days between the twenty-third day of January and the twenty-ninth day of January, in the year of our Lord one thousand eight hundred and ninety, unlawfully, wilfully, and fraudulently converted to the use, benefit, and advantage of him, the said Peter J. Claassen, the said George H. Pell, the said James A. Simmons, and the said divers other persons, to the jurors aforesaid as yet unknown, other than the said association, with the intent then and there on the part of him, the said Peter J. Claassen, to injure and defraud the said association, against the peace of the United States and their dignity and contrary to the form of the statute of the said United States in such case made and provided.

20 *Tenth Count.*

And the jurors aforesaid on their oath aforesaid do further present that Peter J. Claassen, late of the city and county of New York, in the district and circuit aforesaid, yeoman, heretofore, to wit, on the twenty-third day of January, in the year of our Lord one thousand eight hundred and ninety, at the southern district of New York and within the jurisdiction of this court, being then and there an agent of a certain national banking association then and there known and designated as the Sixth National Bank of the City of New York, which said association had been theretofore created and organized under and by virtue of an act of Congress entitled "An act to provide a national currency secured by a pledge of United States bonds and to provide for the circulation and redemption thereof," approved June third, in the year of our Lord one thousand eight hundred and sixty-four, and which said association was then and there acting and carrying on a banking business at the city of New York, in the said district, under the said act of Congress and acts amendatory thereof, did, wilfully and unlawfully and with intent to injure and defraud the said association, misapply and convert to the use, benefit, and advantage of himself, the said Peter J. Claassen, James A. Simmons, George H. Pell, and divers other persons, to the jurors aforesaid as yet unknown, other than the said association certain moneys then and there being the property of the said association, to wit, the sum of four hundred and thirty-two thousand four hundred and sixty-six dollars, in the manner and by the means following—that is to say, he, the said Peter J. Claassen, being then and there such agent as aforesaid, did, without the knowledge and consent of the said association and its board of directors, deliver to the said George H. Pell and did then and there authorize and direct the said George H. Pell to hypothecate certain funds and credits—that is to say:

Ten bonds and written obligations of the Saint Louis and San Francisco Railway Company of the kind called general mortgage bonds of the denomination and value of one thousand dollars each.

Thirty-one bonds and written obligations of the New York Elevated Railroad Company of the kind called first-mortgage bonds of the denomination and value of one thousand dollars each.

Fifteen bonds and written obligations of the Canada Southern Railway Company of the kind called first-mortgage bonds of the denomination and value of one thousand dollars each.

Twenty bonds and written obligations of the Chicago, Milwaukee and Saint Paul Railway Company of the kind called terminal bonds of the denomination and value of one thousand dollars each.

Twenty bonds and written obligations of the Chicago, Milwaukee and Saint Paul Railway Company of the kind called consolidated bonds of the denomination and value of one thousand dollars each.

Ten bonds and written obligations of the Cœur de Alene Railway Company and Navigation Company of the kind called general first-mortgage bonds of the denomination and value of one thousand dollars each.

Ten bonds and written obligations of the Saint Paul and Sioux City railroad of the kind called first-mortgage bonds of the denomination and value of one thousand dollars each.

Twenty-five bonds and written obligations of the Central Pacific railway, San Joaquin Railroad Company, of the kind called first-mortgage bonds of the denomination and value of one thousand dollars each.

21 Ten bonds and written obligations of the Saint Paul, Minneapolis and Manitoba Railway Company of the kind called second-mortgage bonds of the denomination and value of one thousand dollars each.

Twenty-five bonds and written obligations of the Chicago, Burlington and Quincy Railroad Company of the kind called sinking-fund bonds of the denomination and value of one thousand dollars each.

Forty-six bonds and written obligations of the Chicago and Northwestern Railway Company of the kind called debenture bonds of the denomination and value of one thousand dollars each.

Sixty bonds and written obligations of the Chicago, Burlington and Quincy Railroad Company of the kind called debenture bonds of the denomination and value of one thousand dollars each.

Ten bonds and written obligations of the Lake Shore and Michigan Southern Railway Company of the kind called second-mortgage bonds of the denomination and value of one thousand dollars each.

Ten bonds and written obligations of the Chicago and Northwestern Railway Company of the kind called gold first-mortgage bonds of the denomination and value of one thousand dollars each.

Ten bonds and written obligations of the New York, Lake Erie and Western Railway Company of the kind called funded bonds of the denomination and value of one thousand dollars each.

Ten bonds and written obligations of the Chicago, Saint Paul, Minneapolis and Omaha Railway Company of the kind called second-mortgage bonds of the denomination and value of one thousand dollars each.

Five bonds and written obligations of the Burlington, Cedar Rapids and Northern Railway Company of the kind called first-mortgage bonds of the denomination and value of one thousand dollars each.

Four bonds and written obligations of the Texas Pacific Railway Company of the kind called second-mortgage bonds of the denomination and value of one thousand dollars each.

Forty-five bonds and written obligations of the Oregon Short Line Railway Company of the kind called first-mortgage bonds of the denomination and value of one thousand dollars each.

Ten bonds and written obligations of the Louisville, New Albany

and Chicago Railway Company of the kind called first-mortgage bonds of the denomination and value of one thousand dollars each.

Ten bonds and written obligations of the Richmond and West Point Terminal Railway and Warehouse Company of the kind called consolidated first-mortgage gold trust bonds of the denomination and value of one thousand dollars each.

Thirty bonds and written obligations of the Milwaukee and Saint Paul Railway Company of the kind called consolidated bonds of the denomination and value of one thousand dollars each.

Ten bonds and written obligations of the Milwaukee and Saint Paul Railway Company of the kind called La Crosse Division bonds of the denomination and value of one thousand dollars each.

Ten bonds and written obligations of the Spokane Falls and Northern railroad of the kind called first-mortgage bonds of the denomination and value of one thousand dollars each.

Sixty bonds and written obligations of the Union Pacific Railway Company of the kind called first-mortgage bonds of the denomination and value of one thousand dollars each.

Fifty-five bonds and written obligations of the Metropolitan Elevated Railway Company of the kind called first-mortgage bonds of the denomination and value of one thousand dollars each.

Fifteen bonds and written obligations of the Central Pacific Railway Company of the kind called first-mortgage bonds of the denomination and value of one thousand dollars each.

Forty-six bonds and written obligations of the Union Pa-
22 cific Railway Company of the kind called collateral trust bonds of the denomination and value of one thousand dollars each, then and there being the property of the said association, and to obtain loans of money thereon, the redelivery of said bonds and written obligations or their equivalent in value to the said association not being then and there in any way secured, as he, the said Peter J. Claassen, then and there well knew, he, the said Peter J. Claassen, then and there unlawfully and fraudulently devising and intending that the said George H. Pell should hypothecate the said bonds and written obligations and obtain loans of money thereon, and that the said loans of money so to be obtained as aforesaid should be converted to the use, benefit, and advantage of him, the said Peter J. Claassen, the said George H. Pell, the said James A. Simmons, and the said divers other persons, to the jurors aforesaid as yet unknown, other than the said association; and that thereafter, to wit, on divers days between the twenty-third day of January and the twenty-ninth day of January, in the year of our Lord one thousand eight hundred and ninety, the said George H. Pell did, pursuant to the direction and authorization of the said Peter J. Claassen, as such agent as aforesaid, hypothecate a large number of said bonds and written obligations, a more particular description of said bonds and written obligations so hypothecated as aforesaid being to the jurors aforesaid as yet unknown, and did then and

there realize from such hypothecation loans of money amounting in the aggregate to the said sum of four hundred and thirty-two thousand four hundred and sixty-six dollars, which said sum of four hundred and thirty-two thousand four hundred and sixty-six dollars was, on divers days between the twenty-third day of January and the twenty-ninth day of January, in the year of our Lord one thousand eight hundred and ninety, unlawfully, wilfully, and fraudulently converted to the use, benefit, and advantage of him, the said Peter J. Claassen, the said George H. Pell, the said James A. Simmons, and the said divers other persons, to the jurors aforesaid as yet unknown, other than the said association, with the intent then and there on the part of him, the said Peter J. Claassen, to injure and defraud the said association, against the peace of the United States and their dignity and contrary to the form of the statute of the said United States in such case made and provided.

23 *Eleventh Count.*

And the jurors aforesaid on their oath aforesaid do further present that Peter J. Claassen, late of the city and county of New York, in the district and circuit aforesaid, yeoman, heretofore, to wit, on the twenty-third day of January, in the year of our Lord one thousand eight hundred and ninety, at the southern district of New York and within the jurisdiction of this court, being then and there the president of a certain national banking association then and there known and designated as the Sixth National Bank of the City of New York, which said association had been theretofore created and organized under and by virtue of an act of Congress entitled "An act to provide a national currency secured by a pledge of United States bonds and to provide for the circulation and redemption thereof," approved June third, in the year of our Lord one thousand eight hundred and sixty-four, and which said association was then and there acting and carrying on a banking business at the city of New York, in the said district, under the said act of Congress and acts amendatory thereof, did, unlawfully and wilfully and with the intent then and there to injure and defraud the said association and without the knowledge and consent of the said association and its board of directors, deliver to one George H. Pell certain funds and credits, to wit:

Ten bonds and written obligations of the Saint Louis and San Francisco Railway Company of the kind called general mortgage bonds of the denomination and value of one thousand dollars each.

Thirty-one bonds and written obligations of the New York Elevated Railroad Company of the kind called first-mortgage bonds of the denomination and value of one thousand dollars each.

Fifteen bonds and written obligations of the Canada Southern Railway Company of the kind called first-mortgage bonds of the denomination and value of one thousand dollars each.

Twenty bonds and written obligations of the Chicago, Milwaukee and Saint Paul Railway Company of the kind called terminal bonds of the denomination and value of one thousand dollars each.

Twenty bonds and written obligations of the Chicago, Milwaukee and Saint Paul Railway Company of the kind called consolidated bonds of the denomination and value of one thousand dollars each.

Thirty bonds and written obligations of the Milwaukee and Saint Paul Railway Company of the kind called consolidated bonds of the denomination and value of one thousand dollars each.

Ten bonds and written obligations of the Milwaukee and Saint Paul Railway Company of the kind called La Crosse Division bonds of the denomination and value of one thousand dollars each.

Ten bonds and written obligations of the Spokane Falls and Northern railroad of the kind called first-mortgage bonds of the denomination and value of one thousand dollars each.

Sixty bonds and written obligations of the Union Pacific Railway Company of the kind called first-mortgage bonds of the denomination and value of one thousand dollars each.

Fifty-five bonds and written obligations of the Metropolitan Elevated Railway Company of the kind called first-mortgage bonds of the denomination and value of one thousand dollars each.

Fifteen bonds and written obligations of the Central Pacific Railway Company of the kind called first-mortgage bonds of the denomination and value of one thousand dollars each.

Forty-six bonds and written obligations of the Union Pacific Railway Company of the kind called collateral trust bonds of the denomination and value of one thousand dollars each.

24 Ten bonds and written obligations of the Cœur de Alene Railway Company and Navigation Company of the kind called general first-mortgage bonds of the denomination and value of one thousand dollars each.

Ten bonds and written obligations of the Saint Paul and Sioux City railroad of the kind called first-mortgage bonds of the denomination and value of one thousand dollars each.

Twenty-five bonds and written obligations of the Central Pacific railway, San Joaquin Railroad Company, of the kind called first-mortgage bonds of the denomination and value of one thousand dollars each.

Ten bonds and written obligations of the Saint Paul, Minneapolis and Manitoba Railway Company of the kind called second-mortgage bonds of the denomination and value of one thousand dollars each.

Twenty-five bonds and written obligations of the Chicago, Burlington and Quincy Railroad Company of the kind called sinking-fund bonds of the denomination and value of one thousand dollars each.

Forty-six bonds and written obligations of the Chicago and Northwestern Railway Company of the kind called debenture bonds of the denomination and value of one thousand dollars each.

Sixty bonds and written obligations of the Chicago, Burlington and Quincy Railroad Company of the kind called debenture bonds of the denomination and value of one thousand dollars each.

Ten bonds and written obligations of the Lake Shore and Michigan Southern Railway Company of the kind called second-mort-

gage bonds of the denomination and value of one thousand dollars each.

Ten bonds and written obligations of the Chicago and Northwestern Railway Company of the kind called gold first-mortgage bonds of the denomination and value of one thousand dollars each.

Ten bonds and written obligations of the New York, Lake Erie and Western Railway Company of the kind called funded bonds of the denomination and value of one thousand dollars each.

Ten bonds and written obligations of the Chicago, Saint Paul, Minneapolis and Omaha Railway Company of the kind called second-mortgage bonds of the denomination and value of one thousand dollars each.

Five bonds and written obligations of the Burlington, Cedar Rapids and Northern Railway Company of the kind called first-mortgage bonds of the denomination and value of one thousand dollars each.

Four bonds and written obligations of the Texas Pacific Railway Company of the kind called second-mortgage bonds of the denomination and value of one thousand dollars each.

Forty-five bonds and written obligations of the Oregon Short Line Railway Company of the kind called first-mortgage bonds of the denomination and value of one thousand dollars each.

Ten bonds and written obligations of the Louisville, New Albany and Chicago Railway Company of the kind called first-mortgage bonds of the denomination and value of one thousand dollars each.

Ten bonds and written obligations of the Richmond and West Point Terminal Railway and Warehouse Company of the kind called consolidated first-mortgage gold trust bonds of the denomination and value of one thousand dollars each, then and there being the property of the said association, and did then and there authorize and direct the said George H. Pell to sell the said bonds and written obligations, the redelivery of said bonds and written obligations or their equivalent in value to the said association not being then and there in any way secured, as he, the said Peter J. Claassen, then and there well knew, he, the said Peter J. Claassen, then and
25 there unlawfully and fraudulently devising and intending that the proceeds of the sale of said bonds so to be sold as aforesaid should be converted to the use, benefit, and advantage of him, the said Peter J. Claassen, the said George H. Pell, one James A. Simmons, and divers other persons, to the jurors aforesaid as yet unknown, other than the said association; and that thereafter, to wit, on divers days between the twenty-third day of January and the twenty-ninth day of January, in the year of our Lord one thousand eight hundred and ninety, the said George H. Pell, pursuant to the said direction and authorization, did sell a large number of the said bonds and written obligations, a more particular description of said bonds and written obligations so sold as aforesaid being to the jurors aforesaid as yet unknown, and did realize from such sale the sum of four hundred and thirty-two thousand four hundred and sixty-six dollars, which said sum of four hundred and thirty-two thousand four hundred and sixty-six dollars was, on divers days between

the said twenty-third day of January and the said twenty-ninth day of January, in the year of our Lord one thousand eight hundred and ninety, fraudulently, unlawfully, and wilfully and without the knowledge and consent of the said association and its board of directors, misapplied and converted to the use, benefit, and advantage of the said Peter J. Claassen, the said George H. Pell, the said James A. Simmons, and divers other persons, to the jurors aforesaid as yet unknown, other than the said association, with the intent then and there on the part of him, the said Peter J. Claassen, to injure and defraud the said association, against the peace of the United States and their dignity and contrary to the form of the statute of the said United States in such case made and provided.

26 *Twelfth Count.*

And the jurors aforesaid on their oath aforesaid do further present that Peter J. Claassen, late of the city and county of New York, in the district and circuit aforesaid, yeoman, heretofore, to wit, on the twenty-third day of January, in the year of our Lord one thousand eight hundred and ninety, at the southern district of New York and within the jurisdiction of this court, being then and there an agent of a certain national banking association then and there known and designated as the Sixth National Bank of the City of New York, which said association had been theretofore created and organized under and by virtue of an act of Congress entitled "An act to provide a national currency secured by a pledge of United States bonds and to provide for the circulation and redemption thereof," approved June third, in the year of our Lord one thousand eight hundred and sixty-four, and which said association was then and there acting and carrying on a banking business at the city of New York, in the said district, under the said act of Congress and acts amendatory thereof, did, unlawfully and wilfully and with the intent then and there to injure and defraud the said association and without the knowledge and consent of the said association and its board of directors, deliver to one George H. Pell certain funds and credits, to wit:

Ten bonds and written obligations of the Saint Louis and San Francisco Railway Company of the kind called general mortgage bonds of the denomination and value of one thousand dollars each.

Thirty-one bonds and written obligations of the New York Elevated Railroad Company of the kind called first-mortgage bonds of the denomination and value of one thousand dollars each.

Fifteen bonds and written obligations of the Canada Southern Railway Company of the kind called first-mortgage bonds of the denomination and value of one thousand dollars each.

Twenty bonds and written obligations of the Chicago, Milwaukee and Saint Paul Railway Company of the kind called terminal bonds of the denomination and value of one thousand dollars each.

Twenty bonds and written obligations of the Chicago, Milwaukee and Saint Paul Railway Company of the kind called consolidated

bonds of the denomination and value of one thousand dollars each.

Thirty bonds and written obligations of the Milwaukee and Saint Paul Railway Company of the kind called consolidated bonds of the denomination and value of one thousand dollars each.

Ten bonds and written obligations of the Milwaukee and Saint Paul Railway Company of the kind called La Crosse Division bonds of the denomination and value of one thousand dollars each.

Ten bonds and written obligations of the Spokane Falls and Northern railroad of the kind called first-mortgage bonds of the denomination and value of one thousand dollars each.

Sixty bonds and written obligations of the Union Pacific Railway Company of the kind called first mortgage bonds of the denomination and value of one thousand dollars each.

Fifty-five bonds and written obligations of the Metropolitan Elevated Railway Company of the kind called first-mortgage bonds of the denomination and value of one thousand dollars each.

Fifteen bonds and written obligations of the Central Pacific Railway Company of the kind called first-mortgage bonds of the denomination and value of one thousand dollars each.

Forty-six bonds and written obligations of the Union Pacific Railway Company of the kind called collateral trust bonds of the denomination and value of one thousand dollars each.

27 Ten bonds and written obligations of the Cœur de Alene Railway Company and Navigation Company of the kind called general first-mortgage bonds of the denomination and value of one thousand dollars each.

Ten bonds and written obligations of the Saint Paul and Sioux City railroad of the kind called first-mortgage bonds of the denomination and value of one thousand dollars each.

Twenty-five bonds and written obligations of the Central Pacific railway, San Joaquin Railroad Company, of the kind called first-mortgage bonds of the denomination and value of one thousand dollars each.

Ten bonds and written obligations of the Saint Paul, Minneapolis and Manitoba Railway Company of the kind called second-mortgage bonds of the denomination and value of one thousand dollars each.

Twenty-five bonds and written obligations of the Chicago, Burlington and Quincy Railroad Company of the kind called sinking-fund bonds of the denomination and value of one thousand dollars each.

Forty-six bonds and written obligations of the Chicago and Northwestern Railway Company of the kind called debenture bonds of the denomination and value of one thousand dollars each.

Sixty bonds and written obligations of the Chicago, Burlington and Quincy Railroad Company of the kind called debenture bonds of the denomination and value of one thousand dollars each.

Ten bonds and written obligations of the Lake Shore and Michigan Southern Railway Company of the kind called second-mort-

gage bonds of the denomination and value of one thousand dolla
each.

Ten bonds and written obligations of the Chicago and Nort
western Railway Company of the kind called gold first-mortga
bonds of the denomination and value of one thousand dollars eac

Ten bonds and written obligations of the New York, Lake E
and Western Railway Company of the kind called funded bonds
the denomination and value of one thousand dollars each.

Ten bonds and written obligations of the Chicago, Saint Paul, Mi
neapolis and Omaha Railway Company of the kind called secon
mortgage bonds of the denomination and value of one thousa
dollars each.

Five bonds and written obligations of the Burlington, Ced
Rapids and Northern Railway Company of the kind called firs
mortgage bonds of the denomination and value of one thousa
dollars each.

Four bonds and written obligations of the Texas Pacific Railwa
Company of the kind called second-mortgage bonds of the denor
ination and value of one thousand dollars each.

Forty-five bonds and written obligations of the Oregon Short Li
Railway Company of the kind called first-mortgage bonds of t
denomination and value of one thousand dollars each.

Ten bonds and written obligations of the Louisville, New Alba
and Chicago Railway Company of the kind called first-mortga
bonds of the denomination and value of one thousand dollars eac

Ten bonds and written obligations of the Richmond and We
Point Terminal Railway and Warehouse Company of the kin
called consolidated first-mortgage gold trust bonds of the denomina
tion and value of one thousand dollars each, then and there bei
the property of the said association, and did then and there autho
ize and direct the said George H. Pell to sell the said bonds an
written obligations, the redelivery of said bonds and written oblig
tions or their equivalent in value to the said association not bei
then and there in any way secured, as he, the said Peter J. Claasse
then and there well knew, he, the said Peter J. Claassen, then an
there unlawfully and fraudulently devising and intending tha
28 the proceeds of the sale of said bonds so to be sold as aforesai
should be converted to the use, benefit, and advantage
him, the said Peter J. Claassen, the said George H. Pell, one Jam
A. Simmons, and divers other persons, to the jurors aforesaid as y
unknown, other than the said association; and that thereafter, to wi
on divers days between the twenty-third day of January and th
twenty-ninth day of January, in the year of our Lord one thousan
eight hundred and ninety, the said George H. Pell, pursuant to th
said direction and authorization, did sell a large number of the sai
bonds and written obligations, a more particular description of sai
bonds and written obligations so so'd as aforesaid being to the juro
aforesaid as yet unknown, and did realize from such sale the sum o
four hundred and thirty-two thousand four hundred and sixty-si
dollars, which said sum of four hundred and thirty-two thousand fou
hundred and sixty-six dollars was, on divers days between the sai

twenty-third day of January and the said twenty-ninth day of January, in the year of our Lord one thousand eight hundred and ninety, fraudulently, unlawfully, and wilfully and without the knowledge and consent of the said association and its board of directors misapplied and converted to the use, benefit, and advantage of the said Peter J. Claassen, the said George H. Pell, the said James A. Simmons, and divers other persons, to the jurors aforesaid as yet unknown, other than the said association, with the intent then and there on the part of him, the said Peter J. Claassen, to injure and defraud the said association, against the peace of the United States and their dignity and contrary to the form of the statute of the said United States in such case made and provided.

29 *Thirteenth Count.*

And the jurors aforesaid on their oath aforesaid do further present that Peter J. Claassen, late of the city and county of New York, in the district and circuit aforesaid, yeoman, heretofore, to wit, on the twenty-ninth day of January, in the year of our Lord one thousand eight hundred and ninety, at the southern district of New York and within the jurisdiction of this court, he, the said Peter J. Claassen, being then and there the president of a certain national banking association then and there known and designated as the Sixth National Bank of the City of New York, which said association had been theretofore created and organized under and by virtue of an act of Congress entitled "An act to provide a national currency secured by a pledge of United States bonds and to provide for the circulation and redemption thereof," approved June third, in the year of our Lord one thousand eight hundred and sixty-four, and which said association was then and there acting and carrying on a banking business at the city of New York, in said district, under the said act of Congress and acts amendatory thereof, did, by virtue of his said office and employment and while he was so employed and acting as such president as aforesaid, receive and take into his possession large sums of moneys and funds, then and there being the property of the said association, and which he held for and in the name and on account of said association, and did then and there, wilfully and unlawfully and with intent to injure and defraud the said association, embezzle and convert to his own use certain portions and parts of said moneys and funds, to wit, the sum of four hundred and thirty-two thousand four hundred and sixty-six dollars, against the peace of the United States and their dignity and contrary to the form of the statute of the said United States in such case made and provided.

30 *Fourteenth Count.*

And the jurors aforesaid on their oath aforesaid do further present that Peter J. Claassen, late of the city and county of New York, in the district and circuit aforesaid, yeoman, heretofore, to wit, on the twenty-ninth day of January, in the year of our Lord one thousand eight hundred and ninety, at the southern district of New

York and within the jurisdiction of this court, he, the said Peter J. Claassen, being then and there an agent of a certain national banking association then and there known and designated as the Sixth National Bank of the City of New York, which said association had been theretofore created and organized under and by virtue of an act of Congress entitled "An act to provide a national currency secured by a pledge of United States bonds and to provide for the circulation and redemption thereof," approved June third, in the year of our Lord one thousand eight hundred and sixty-four, and which said association was then and there acting and carrying on a banking business at the city of New York, in said district, under the said act of Congress and acts amendatory thereof, did, by virtue of his said employment and while he was so employed as aforesaid, receive and take into his possession large sums of moneys and funds, then and there being the property of the said association, and which he held for and in the name and on account of said association, and did then and there, wilfully and unlawfully and with intent to injure and defraud the said association, embezzle and convert to his own use certain portions and parts of said moneys and funds, to wit, the sum of four hundred and thirty-two thousand four hundred and sixty-six dollars, against the peace of the United States and their dignity and contrary to the form of the statute of the said United States in such case made and provided.

31 *Fifteenth Count.*

And the jurors aforesaid on their oath aforesaid do further present that Peter J. Claassen, late of the city and county of New York, in the district and circuit aforesaid, yeoman, heretofore, to wit, on the twenty-ninth day of January, in the year of our Lord one thousand eight hundred and ninety, at the southern district of New York and within the jurisdiction of this court, being then and there the president of a certain national banking association then and there known and designated as the Sixth National Bank of the City of New York, which said association had been theretofore created and organized under and by virtue of an act of Congress entitled "An act to provide a national currency secured by a pledge of United States bonds and to provide for the circulation and redemption thereof," approved June third, in the year of our Lord one thousand eight hundred and sixty-four, and which said association was then and there acting and carrying on a banking business at the city of New York, in the said district, under the said act of Congress and acts amendatory thereof, did, unlawfully and wilfully and without the knowledge and consent of the said association and its board of directors and with intent to injure and defraud the said association, abstract and convert to the use, benefit, and advantage of himself, the said Peter J. Claassen, certain moneys and funds then and there being the property of the said association, of the amount and value of four hundred and thirty-two thousand four hundred and sixty-six dollars, against the peace of the United States and their dignity and contrary to the form of the statute of the said United States in such case made and provided.

32 *Sixteenth Count.*

And the jurors aforesaid on their oath aforesaid do further present that Peter J. Claassen, late of the city and county of New York, in the district and circuit aforesaid, yeoman, heretofore, to wit, on the twenty-ninth day of January, in the year of our Lord one thousand eight hundred and ninety, at the southern district of New York and within the jurisdiction of this court, being then and there an agent of a certain national banking association then and there known and designated as the Sixth National Bank of the City of New York, which said association had been theretofore created and organized under and by virtue of an act of Congress entitled "An act to provide a national currency secured by a pledge of United States bonds and to provide for the circulation and redemption thereof," approved June third, in the year of our Lord one thousand eight hundred and sixty-four, and which said association was then and there acting and carrying on a banking business at the city of New York, in the said district, under the said act of Congress and acts amendatory thereof, did, unlawfully and wilfully and without the knowledge and consent of the said association and its board of directors and with intent to injure and defraud the said association, abstract and convert to the use, benefit, and advantage of himself, the said Peter J. Claassen, certain moneys and funds then and there being the property of the said association, of the amount and value of four hundred and thirty-two thousand four hundred and sixty-six dollars, against the peace of the United States and their dignity and contrary to the form of the statute of the said United States in such case made and provided.

33 *Seventeenth Count.*

And the jurors aforesaid on their oath aforesaid do further present that Peter J. Claassen, late of the city and county of New York, in the district and circuit aforesaid, yeoman, heretofore, to wit, on the twenty-ninth day of January, in the year of our Lord one thousand eight hundred and ninety, at the southern district of New York and within the jurisdiction of this court, being then and there the president of a certain national banking association then and there known and designated as the Sixth National Bank of the City of New York, which said association had been theretofore created and organized under and by virtue of an act of Congress entitled "An act to provide a national currency secured by a pledge of United States bonds and to provide for the circulation and redemption thereof," approved June third, in the year of our Lord one thousand eight hundred and sixty-four, and which said association was then and there acting and carrying on a banking business at the city of New York, in the said district, under the said act of Congress and acts amendatory thereof, did, unlawfully and wilfully and without the knowledge and consent of the said association and its board of directors and with intent to injure and defraud the said association, abstract and convert to the use, benefit, and advantage of himself, the said Peter J. Claassen, and divers other persons, to the jurors aforesaid as yet

unknown, other than the said association certain moneys and funds then and there being the property of the said association, of the amount and value of four hundred and thirty-two thousand four hundred and sixty-six dollars, against the peace of the United States and their dignity and contrary to the form of the statute of the said United States in such case made and provided.

34 *Eighteenth Count.*

And the jurors aforesaid on their oath aforesaid do further present that Peter J. Claassen, late of the city and county of New York, in the district and circuit aforesaid, yeoman, heretofore, to wit, on the twenty-ninth day of January, in the year of our Lord one thousand eight hundred and ninety, at the southern district of New York and within the jurisdiction of this court, being then and there the agent of a certain national banking association then and there known and designated as the Sixth National Bank of the City of New York, which said association had been theretofore created and organized under and by virtue of an act of Congress entitled "An act to provide a national currency secured by a pledge of United States bonds and to provide for the circulation and redemption thereof," approved June third, in the year of our Lord one thousand eight hundred and sixty-four, and which said association was then and there acting and carrying on a banking business at the city of New York, in the said district, under the said act of Congress and acts amendatory thereof, did, unlawfully and without the knowledge and consent of the said association and its board of directors and with intent to injure and defraud the said association, abstract and convert to the use, benefit, and advantage of himself, the said Peter J. Claassen, and divers other persons, to the jurors aforesaid as yet unknown, other than the said association, certain moneys and funds then and there being the property of the said association, of the amount and value of four hundred and thirty-two thousand four hundred and sixty-six dollars, against the peace of the United States and their dignity and contrary to the form of the statute of the said United States in such case made and provided.

35 *Nineteenth Count.*

And the jurors aforesaid on their oath aforesaid do further present that Peter J. Claassen, late of the city and county of New York, in the district and circuit aforesaid, yeoman, heretofore, to wit, on the twenty-second day of January, in the year of our Lord one thousand eight hundred and ninety, at the southern district of New York and within the jurisdiction of this court, being then and there the president of a certain national banking association then and there known and designated as the Sixth National Bank of the City of New York, which said association had been theretofore created and organized under and by virtue of an act of Congress entitled "An act to provide a national currency secured by a pledge of United States bonds and to provide for the circulation and redemption thereof," approved June third, in the year of our

Lord one thousand eight hundred and sixty-four, and which said association was then and there acting and carrying on a banking business at the city of New York, in the said district, under the said act of Congress and acts amendatory thereof, did, wilfully and unlawfully and with intent to injure and defraud the said association, misapply and convert to the use, benefit, and advantage of one James A. Simmons certain moneys and funds then and there being the property of the said association, to wit, the sum of sixty thousand dollars, in the manner and by the means following—that is to say, he, the said Peter J. Claassen, being then and there such president as afore said, did, without the knowledge and consent of said association or its board of directors, procure the making by one Andrew E. Colson, who was then and there the cashier of said association, of a certain writing and check, commonly known and called a cashier's check, bearing date the twenty-second day of January, in the year of our Lord one thousand eight hundred and ninety, which said check did then and there authorize and direct the said association to pay to the order of the said James A. Simmons the sum of sixty thousand dollars, although, as he, the said Peter J. Claassen, then and there well knew, the said sum of sixty thousand dollars was not then and there on deposit with the said association to the credit of him, the said James A. Simmons, and was not then and there due and owing from the said association to him, the said James A. Simmons, and the repayment thereof to the said association was not then and there in any way secured, and the said James A. Simmons had no manner of right and title to the same, and he, the said Peter J. Claassen, then and there unlawfully devising and intending that he, the said James A. Simmons, should appropriate and convert to his own use the said sum of sixty thousand dollars from and out of the moneys and funds of the said association, which said sum of money was, upon and pursuant to the direction and authorization contained in the said check, thereafter, to wit, on the twenty-third day of January, in the year of our Lord one thousand eight hundred and ninety, paid by the said association from and out of the moneys and funds of the said association to the said James A. Simmons, and was then and there appropriated and converted to the use of the said James A. Simmons, against the peace of the United States and their dignity and contrary to the form of the statute of the said United States in such case made and provided.

36 *Twentieth Count.*

And the jurors aforesaid on their oath aforesaid do further present that Peter J. Claassen, late of the city and county of New York, in the district and circuit aforesaid, yeoman, heretofore, to wit, on the twenty-second day of January, in the year of our Lord one thousand eight hundred and ninety, at the southern district of New York and within the jurisdiction of this court, being then and there an agent of a certain national banking association then and there known and designated as the Sixth National Bank of the City of New York, which said association had been theretofore created

and organized under and by virtue of an act of Congress entitled "An act to provide a national currency secured by a pledge of United States bonds and to provide for the circulation and redemption thereof," approved June third, in the year of our Lord one thousand eight hundred and sixty-four, and which said association was then and there acting and carrying on a banking business at the city of New York, in the said district, under the said act of Congress and acts amendatory thereof, did, wilfully and unlawfully and with intent to injure and defraud the said association, misapply and convert to the use, benefit, and advantage of one James A. Simmons certain moneys and funds then and there being the property of the said association, to wit, the sum of sixty thousand dollars, in the manner and by the means following—that is to say, he, the said Peter J. Claassen, being then and there such agent as aforesaid, did, without the knowledge and consent of the said association or its board of directors, procure the making by one Andrew E. Colson, who was then and there the cashier of said association, of a certain writing and check, commonly known and called a cashier's check, bearing date the twenty-second day of January, in the year of our Lord one thousand eight hundred and ninety, which said check did then and there authorize and direct the said association to pay to the order of the said James A. Simmons the sum of sixty thousand dollars, although, as he, the said Peter J. Claassen, then and there well knew, the said sum of sixty thousand dollars was not then and there on deposit with the said association to the credit of him, the said James A. Simmons, and was not then and there due and owing from the said association to him, the said James A. Simmons, and the repayment thereof to the said association was not then and there in any way secured, and the said James A. Simmons had no manner of right and title to the same, and he, the said Peter J. Claassen, then and there unlawfully devising and intending that he, the said James A. Simmons, should appropriate and convert to his own use the said sum of sixty thousand dollars from and out of the moneys and funds of the said association, which said sum of money was, upon and pursuant to the direction and authorization contained in the said check, thereafter, to wit, on the twenty-third day of January, in the year of our Lord one thousand eight hundred and ninety, paid by the said association from and out of the moneys and funds of the said association to the said James A. Simmons and was then and there appropriated and converted to the use of the said James A. Simmons, against the peace of the United States and their dignity and contrary to the form of the statute of the said United States in such case made and provided.

37 *Twenty-first Count.*

And the jurors aforesaid on their oath aforesaid do further present that Peter J. Claassen, late of the city and county of New York, in the district and circuit aforesaid, yeoman, heretofore, to wit, on the twenty-second day of January, in the year of our Lord one thousand eight hundred and ninety, at the southern district of New

York and within the jurisdiction of this court, being then and there the president of a certain national banking association then and there known and designated as the Sixth National Bank of the City of New York, which said association had been theretofore created and organized under and by virtue of an act of Congress entitled "An act to provide a national currency secured by a pledge of United States bonds and to provide for the circulation and redemption thereof," approved June third, in the year of our Lord one thousand eight hundred and sixty-four, and which said association was then and there acting and carrying on a banking business at the city of New York, in the said district, under the said act of Congress and acts amendatory thereof, did, wilfully and unlawfully and with intent to injure and defraud the said association, misapply and convert to the use, benefit, and advantage of a certain copartnership composed of William M. Kilduff and Charles E. Wallack, then and there carrying on business under the name and style of Pell, Wallack and Company, certain moneys and funds then and there being the property of the said association, to wit, the sum of sixty thousand dollars, in the manner and by the means following—that is to say, he, the said Peter J. Claassen, being then and there such president as aforesaid, did, without the knowledge and consent of said association or its board of directors, procure the making by one Andrew E. Colson, who was then and there the cashier of said association, of a certain writing and check, commonly known and called a cashier's check, bearing date the twenty-second day of January, in the year of our Lord one thousand eight hundred and ninety, which said check did then and there authorize and direct the said association to pay to the order of the said copartnership the sum of sixty thousand dollars, although, as he, the said Peter J. Claassen, then and there well knew, the said sum of sixty thousand dollars was not then and there on deposit with the said association to the credit of the said copartnership, and was not then and there due and owing from said association to the said copartnership, and the repayment thereof to the said association was not then and there in any way secured, and the said copartnership had no manner of right and title to the same, and he, the said Peter J. Claassen, then and there unlawfully devising and intending that the said copartnership should appropriate and convert to its own use the said sum of sixty thousand dollars from and out of the moneys and funds of the said association, which said sum of money was, upon and pursuant to the direction and authorization contained in said check, thereafter, to wit, on the twenty-third day of January, in the year of our Lord one thousand eight hundred and ninety, paid by the said association from and out of the moneys and funds of the said association to the said copartnership, and was then and there appropriated and converted to the use of the said copartnership, against the peace of the United States and their dignity and contrary to the form of the statute of the said United States in such case made and provided.

38 *Twenty-second Count.*

And the jurors aforesaid on their oath aforesaid do further present that Peter J. Claassen, late of the city and county of New York, in the district and circuit aforesaid, yeoman, heretofore, to wit, on the twenty-second day of January, in the year of our Lord one thousand eight hundred and ninety, at the southern district of New York and within the jurisdiction of this court, being then and there an agent of a certain national banking association then and there known and designated as the Sixth National Bank of the City of New York, which said association had been theretofore created and organized under and by virtue of an act of Congress entitled "An act to provide a national currency secured by a pledge of United States bonds and to provide for the circulation and redemption thereof," approved June third, in the year of our Lord one thousand eight hundred and sixty-four, and which said association was then and there acting and carrying on a banking business at the City of New York, in the said district, under the said act of Congress and acts amendatory thereof, did, wilfully and unlawfully and with intent to injure and defraud the said association, misapply and convert to the use, benefit, and advantage of a certain copartnership composed of William M. Kilduff and Charles E. Wallack, then and there carrying on business under the name and style of Pell, Wallack & Company, certain moneys and funds then and there being the property of the said association, to wit, the sum of sixty thousand dollars, in the manner and by the means following—that is to say, he, the said Peter J. Claassen, being then and there such agent as aforesaid, did, without the knowledge and consent of said association or its board of directors, procure the making by one Andrew E. Colson, who was then and there the cashier of said association, of a certain writing and check, commonly known and called a cashier's check, bearing date the twenty-second day of January, in the year of our Lord one thousand eight hundred and ninety, which said check did then and there authorize and direct the said association to pay to the order of the said copartnership the sum of sixty thousand dollars, although, as he, the said Peter J. Claassen, then and there well knew, the said sum of sixty thousand dollars was not then and there on deposit with the said association to the credit of the said copartnership, and was not then and there due and owing from said association to said copartnership, and the repayment thereof to the said association was not then and there in any way secured, and the said copartnership had no manner of right and title to the same, and he, the said Peter J. Claassen, then and there unlawfully devising and intending that the said copartnership should appropriate and convert to its own use the said sum of sixty thousand dollars from and out of the moneys and funds of the said association, which said sum of money was, upon and pursuant to the direction and authorization contained in said check, thereafter, to wit, on the twenty-third day of January, in the year of our Lord one thousand eight hundred and ninety, paid by the said association from and out of the moneys and funds of the said association to the

said copartnership, and was then and there appropriated and converted to the use of the said copartnership, against the peace of the United States and their dignity and contrary to the form of the statute of the said United States in such case made and provided.

39 *Twenty-third Count.*

And the jurors aforesaid on their oath aforesaid do further present that Peter J. Claassen, late of the city and county of New York, in the district and circuit aforesaid, yeoman, heretofore, to wit, on the twenty-second day of January, in the year of our Lord one thousand eight hundred and ninety, at the southern district of New York and within the jurisdiction of this court, being then and there the president of a certain national banking association then and there known and designated as the Sixth National Bank of the City of New York, which said association had been theretofore created and organized under and by virtue of an act of Congress entitled "An act to provide a national currency secured by a pledge of United States bonds and to provide for the circulation and redemption thereof," approved June third, in the year of our Lord one thousand eight hundred and sixty-four, and which said association was then and there acting and carrying on a banking business at the city of New York, in the said district, under the said act of Congress and acts amendatory thereof, did, wilfully and unlawfully and with intent to injure and defraud the said association, misapply and convert to the use, benefit, and advantage of a certain copartnership, composed of John Satterlee and James A. Simmons, then and there carrying on business under the name and style of John Satterlee and Company, certain moneys and funds then and there being the property of the said association, to wit, the sum of sixty thousand dollars, in the manner and by the means following—that is to say, he, the said Peter J. Claassen, being then and there such president as aforesaid, did, without the knowledge and consent of said association or its board of directors, procure the making by one Andrew E. Colson, who was then and there the cashier of said association, of a certain writing and check, commonly known and called a cashier's check, bearing date the twenty-second day of January, in the year of our Lord one thousand eight hundred and ninety, which said check did then and there authorize and direct the said association to pay to the order of the said copartnership the sum of sixty thousand dollars, although, as he, the said Peter J. Claassen, then and there well knew, the said sum of sixty thousand dollars was not then and there on deposit with the said association to the credit of the said copartnership, and was not then and there due and owing from said association to the said copartnership, and the repayment thereof to the said association was not then and there in any way secured, and the said copartnership had no manner of right and title to the same, and he, the said Peter J. Claassen, then and there unlawfully devising and intending that the said copartnership should appropriate and convert to its own use the said sum of sixty thousand dollars from and out of the moneys and

funds of the said association, which said sum of money was, upon and pursuant to the direction and authorization contained in said check, thereafter, to wit, on the twenty-third day of January, in the year of our Lord one thousand eight hundred and ninety, paid by the said association from and out of the moneys and funds of the said association to the said copartnership, and was then and there appropriated and converted to the use of the said copartnership, against the peace of the United States and their dignity and contrary to the form of the statute of the said United States in such — made and provided.

40 *Twenty-fourth Count.*

And the jurors aforesaid on their oath aforesaid do further present that Peter J. Claassen, late of the city and county of New York, in the district and circuit aforesaid, yeoman, heretofore, to wit, on the twenty-second day of January, in the year of our Lord one thousand eight hundred and ninety, at the southern district of New York and within the jurisdiction of this court, being then and there an agent of a certain national banking association then and there known and designated as the Sixth National Bank of the City of New York, which said association had been theretofore created and organized under and by virtue of an act of Congress entitled "An act to provide a national currency secured by a pledge of United States bonds and to provide for the circulation and redemption thereof," approved June third, in the year of our Lord one thousand eight hundred and sixty-four, and which said association was then and there acting and carrying on a banking business at the city of New York, in the said district, under the said act of Congress and acts amendatory thereof, did, wilfully and unlawfully and with intent to injure and defraud the said association, misapply and convert to the use, benefit, and advantage of a certain copartnership composed of John Satterlee and James A. Simmons, then and there carrying on business under the name and style of John Satterlee and Company, certain moneys and funds then and there being the property of the said association, to wit, the sum of sixty thousand dollars, in the manner and by the means following—that is to say, he, the said Peter J. Claassen, being then and there such agent as aforesaid, did, without the knowledge and consent of said association or its board of directors, procure the making by one Andrew E. Colson, who was then and there the cashier of said association, of a certain writing and check, commonly known and called a cashier's check, bearing date the twenty-second day of January, in the year of our Lord one thousand eight hundred and ninety, which said check did then and there authorize and direct the said association to pay to the order of the said copartnership the sum of sixty thousand dollars, although, as he, the said Peter J. Claassen, then and there well knew, the said sum of sixty thousand dollars was not then and there on deposit with the said association to the credit of the said copartnership, and was not then and there due and owing from the said association to the said copartnership, and the repayment thereof

to the said association was not then and there in any way secured, and the said copartnership had no manner of right and title to the same, and he, the said Peter J. Claassen, then and there unlawfully devising and intending that the said copartnership should appropriate and convert to its own use the said sum of sixty thousand dollars from and out of the moneys and funds of the said association, which said sum of money was, upon and pursuant to the direction and authorization contained in the said check, thereafter, to wit, on the twenty-third day of January, in the year of our Lord one thousand eight hundred and ninety, paid by the said association from and out of the moneys and funds of the said association to the said copartnership and was then and there appropriated and converted to the use of the said copartnership, against the peace of the United States and their dignity and contrary to the form of the statute of the said United States in such case made and provided.

41 *Twenty-fifth Count.*

And the jurors aforesaid on their oath aforesaid do further present that Peter J. Claassen, late of the city and county of New York, in the district and circuit aforesaid, yeoman, heretofore, to wit, on the twenty-fourth day of January, in the year of our Lord one thousand eight hundred and ninety, at the southern district of New York and within the jurisdiction of this court, being then and there the president of a certain national banking association then and there known and designated as the Sixth National Bank of the City of New York, which said association had been theretofore created and organized under and by virtue of an act of Congress entitled "An act to provide a national currency secured by a pledge of United States bonds and to provide for the circulation and redemption thereof," approved June third, in the year of our Lord one thousand eight hundred and sixty-four, and which said association was then and there acting and carrying on a banking business at the city of New York, in the said district, under the said act of Congress and acts amendatory thereof, did, wilfully and unlawfully and with intent to injure and defraud the said association, misapply and convert to the use, benefit, and advantage of a certain banking corporation then and there known and designated as the Lenox Hill bank, which said banking corporation had been theretofore created and organized under and by virtue of the laws of the State of New York and was then and there acting and carrying on a banking business at the city of New York, in the said district, certain moneys and funds then and there being the property of the said Sixth National Bank of the City of New York, to wit, the sum of two hundred and seven thousand eight hundred dollars, in the manner and by the means following—that is to say, "that he, the said Peter J. Claassen, as such president as aforesaid, did, without the knowledge and consent of the said Sixth National Bank of the City of New York and without the knowledge and consent of the board of directors thereof, then and there cause to be paid at the New York Clearing House Association to and upon divers checks and written orders for the payment of money made

and drawn upon the said Lenox Hill bank by divers persons to the jurors aforesaid as yet unknown, and then and there presented for payment at the said New York Clearing House Association by divers banking corporations then and there being members of the said New York Clearing House Association, a more particular description of which said divers banking corporations is to the jurors aforesaid as yet unknown, the said sum of two hundred and seven thousand eight hundred dollars, he, the said Peter J. Claassen, then and there well knowing that the said Sixth National Bank of the City of New York was then and there the clearing-house agent of the said Lenox Hill bank at the said New York Clearing House Association, which said sum so paid as aforesaid, as he, the said Peter J. Claassen, then and there well knew, was in excess of all sums and amounts which the said Lenox Hill bank was then and there entitled to have paid out of the moneys and funds of the said Sixth National Bank of the City of New York, he, the said Peter J. Claassen, then and there unlawfully, wickedly, and fraudulently devising and intending that the said sum of two hundred and seven thousand eight hundred dollars should be and the same then and there was appropriated and converted to the use, benefit, and advantage of the said Lenox Hill bank, although, as he, the said Peter J. Claassen, then and there well knew, the said sum of two hundred and seven thousand eight hundred dollars so paid as aforesaid had not
42 been deposited and was not then on deposit with the said Sixth National Bank of the City of New York by the said Lenox Hill bank, and was not then and there due and owing from the said Sixth National Bank of the City of New York to the said Lenox Hill bank, and the repayment thereof to the said Sixth National Bank of the City of New York was not then and there in any way secured, and the said Lenox Hill bank had no manner of right or title to the same, against the peace of the United States and their dignity and contrary to the form of the statute of the said United States in such case made and provided.

43 *Twenty-sixth Count.*

And the jurors aforesaid on their oath aforesaid do further present that Peter J. Claassen, late of the city and county of New York, in the district and circuit aforesaid, yeoman, heretofore, to wit, on the twenty-fourth day of January, in the year of our Lord one thousand eight hundred and ninety, at the southern district of New York and within the jurisdiction of this court, being then and there an agent of a certain national banking association then and there known and designated as the Sixth National Bank of the City of New York, which said association had been theretofore created and organized under and by virtue of an act of Congress entitled "An act to provide a national currency secured by a pledge of United States bonds and to provide for the circulation and redemption thereof," approved June third, in the year of our Lord one thousand eight hundred and sixty-four, and which said association was then and there acting and carrying on a banking business at the city of

New York, in the said district, under the said act of Congress and acts amendatory thereof, did, wilfully and unlawfully and with intent to injure and defraud the said association, misapply and convert to the use, benefit, and advantage of a certain banking corporation then and there known and designated as the Lenox Hill bank, which said banking corporation had been theretofore created and organized under and by virtue of the laws of the State of New York and was then and there acting and carrying on a banking business at the city of New York, in the said district, certain moneys and funds then and there being the property of the said Sixth National Bank of the City of New York, to wit, the sum of two hundred and seven thousand eight hundred dollars, in the manner and by the means following—that is to say, "that he, the said Peter J. Claassen, as such agent as aforesaid, did, without the knowledge and consent of the said Sixth National Bank of the City of New York and without the knowledge and consent of the board of directors thereof, then and there cause to be paid at the New York Clearing House Association to and upon divers checks and written orders for the payment of money made and drawn upon the said Lenox Hill bank by divers persons to the jurors aforesaid as yet unknown, and then and there presented for payment at the said New York Clearing House Association by divers banking corporations then and there being members of the said New York Clearing House Association, a more particular description of which said divers banking corporations is to the jurors aforesaid as yet unknown, the said sum of two hundred and seven thousand eight hundred dollars, he, the said Peter J. Claassen, then and there well knowing that the said Sixth National Bank of the City of New York was then and there the clearing-house agent of the said Lenox Hill bank at the said New York Clearing House Association, which said sum so paid as aforesaid, as he, the said Peter J. Claassen, then and there well knew, was in excess of all sums and amounts which the said Lenox Hill bank was then and there entitled to have paid out of the moneys and funds of the said Sixth National Bank of the City of New York, he, the said Peter J. Claassen, then and there unlawfully, wickedly, and fraudulently devising and intending that the said sum of two hundred and seven thousand eight hundred dollars should be and the same then and there was appropriated and converted to the use, benefit, and advantage of the said Lenox Hill bank, although, as he, the said Peter J. Claassen, then and there well knew, the said sum of two hundred and seven thousand eight hundred dollars, so paid as aforesaid, had not been deposited and was not then
41 on deposit with the said Sixth National Bank of the City of New York by the said Lenox Hill bank, and was not then and there due and owing from the said Sixth National Bank of the City of New York to the said Lenox Hill bank, and the repayment thereof to the said Sixth National Bank of the City of New York was not then and there in any way secured, and the said Lenox Hill bank had no manner of right or title to the same, against the peace of the United States and their dignity and contrary to the form of the statute of the said United States in such case made and provided.

45 *Twenty-seventh Count.*

And the jurors aforesaid on their oath aforesaid do further present that Peter J. Claassen, late of the city and county of New York, in the district and circuit aforesaid, yeoman, heretofore, to wit, on the twenty-fourth day of January, in the year of our Lord one thousand eight hundred and ninety, at the southern district of New York and within the jurisdiction of this court, being then and there the president of a certain national banking association then and there known and designated as the Sixth National Bank of the City of New York, which said association had been theretofore created and organized under and by virtue of an act of Congress entitled "An act to provide a national currency secured by a pledge of United States bonds and to provide for the circulation and redemption thereof," approved June third, in the year of our Lord one thousand eight hundred and sixty-four, and which said association was then and there acting and carrying on a banking business at the city of New York, in the said district, under the said act of Congress and acts amendatory thereof, did, wilfully and unlawfully and with intent to injure and defraud the said association, misapply and convert to the use, benefit, and advantage of a certain banking corporation then and there known and designated as the Lenox Hill bank, which said banking corporation had been theretofore created and organized under and by virtue of the laws of the State of New York and was then and there acting and carrying on a banking business at the city of New York, in the said district, certain moneys and funds then and there being the property of the said Sixth National Bank of the City of New York, to wit, the sum of two hundred and seven thousand eight hundred dollars, in the manner and by the means following—that is to say, that he, the said Peter J. Claassen, as such president as aforesaid, did, without the knowledge and consent of the said Sixth National Bank of the City of New York and without the knowledge and consent of the board of directors thereof, then and there cause to be paid for the use and on account of the said Lenox Hill bank upon certain checks and written orders for the payment of money the said sum of two hundred and seven thousand eight hundred dollars in excess of all sums and amounts which the said Lenox Hill bank was then and there entitled to draw and to have paid out of the moneys and funds of the said Sixth National Bank of the City of New York, he, the said Peter J. Claassen, then and there unlawfully, wickedly, and fraudulently devising and intending that the said sum of two hundred and seven thousand eight hundred dollars should be and the same then and there was appropriated and converted to the use, benefit, and advantage of the said Lenox Hill bank, although, as he, the said Peter J. Claassen, then and there well knew, the said sum of two hundred and seven thousand eight hundred dollars so paid as aforesaid had not been deposited and was not then on deposit with the said Sixth National Bank of the City of New York by the said Lenox Hill bank and was not then and there due and owing by and from the said Sixth National Bank of the City of New York to the said Lenox

Hill bank, and the repayment thereof to the said Sixth National Bank of the City of New York was not then and there in any way secured, and the said Lenox Hill bank had no manner of right and title to the same, against the peace of the United States and their dignity and contrary to the form of the statute of the said United States in such case made and provided.

46 *Twenty-eighth Count.*

And the jurors aforesaid on their oath aforesaid do further present that Peter J. Claassen, late of the city and county of New York, in the district and circuit aforesaid, yeoman, heretofore, to wit, on the twenty-fourth day of January, in the year of our Lord one thousand eight hundred and ninety, at the southern district of New York and within the jurisdiction of this court, being then and there the agent of a certain national banking association then and there known and designated as the Sixth National Bank of the City of New York, which said association had been theretofore created and organized under and by virtue of an act of Congress entitled "An act to provide a national currency secured by a pledge of United States bonds and to provide for the circulation and redemption thereof," approved June third, in the year of our Lord one thousand eight hundred and sixty-four, and which said association was then and there acting and carrying on a banking business at the city of New York, in the said district, under the said act of Congress and acts amendatory thereof, did, wilfully and unlawfully and with intent to injure and defraud the said association, misapply and convert to the use, benefit, and advantage of a certain banking corporation then and there known and designated as the Lenox Hill bank, which said banking corporation had been theretofore created and organized under and by virtue of the laws of the State of New York and was then and there acting and carrying on a banking business at the city of New York, in the said district, certain moneys and funds then and there being the property of the said Sixth National bank of the city of New York, to wit, the sum of two hundred and seven thousand eight hundred dollars, in the manner and by the means following—that is to say, that he, the said Peter J. Claassen, as such agent as aforesaid, did, without the knowledge and consent of said Sixth National Bank of the City of New York and without the knowledge and consent of the board of directors thereof, then and there cause to be paid for the use and on account of the said Lenox Hill bank upon certain checks and written orders for the payment of money the said sum of two hundred and seven thousand eight hundred dollars in excess of all sums and amounts which the said Lenox Hill bank was then and there entitled to draw and to have paid out of the moneys and funds of the said Sixth National Bank of the City of New York, he, the said Peter J. Claassen, then and there unlawfully, wickedly, and fraudulently devising and intending that the said sum of two hundred and seven thousand eight hundred dollars should be, and the same then and there was, appropriated and converted to the use, benefit, and advantage of the

said Lenox Hill bank, although, as he, the said Peter J. Claassen, then and there well knew, the said sum of two hundred and seven thousand eight hundred dollars so paid as aforesaid had not been deposited and was not then on deposit with the said Sixth National Bank of the City of New York by the said Lenox Hill bank, and was not then and there due and owing by and from the said Sixth National Bank of the City of New York to the said Lenox Hill bank, and the repayment thereof to the said Sixth National Bank of the City of New York was not then and there in any way secured, and the said Lenox Hill bank had no manner of right and title to the same, against the peace of the United States and their dignity and contrary to the form of the statute of the said United States in such case made and provided.

47 *Twenty-ninth Count.*

And the jurors aforesaid on their oath aforesaid do further present that Peter J. Claassen, late of the city and county of New York, in the district and circuit aforesaid, yeoman, heretofore, to wit, on the twenty-fourth day of January, in the year of our Lord one thousand eight hundred and ninety, at the southern district of New York and within the jurisdiction of this court, being then and there the president of a certain national banking association then and there known and designated as the Sixth National Bank of the City of New York, which said association had been theretofore created and organized under and by virtue of an act of Congress entitled "An act to provide a national currency secured by a pledge of United States bonds and to provide for the circulation and redemption thereof," approved June third, in the year of our Lord one thousand eight hundred and sixty-four, and which said association was then and there acting and carrying on a banking business at the city of New York, in the said district, under the said act of Congress and acts amendatory thereof, did, wilfully and unlawfully and with intent to injure and defraud the said association, misapply and convert to the use, benefit, and advantage of the Lenox Hill bank, then and there being a banking corporation which had been theretofore created and organized under the laws of the State of New York and was then and there acting and carrying on a banking business at the city of New York, in the district aforesaid, certain moneys and funds, to wit, the sum of two hundred and seven thousand eight hundred dollars, then and there being the property of the said national banking association, in the manner and by the means following—that is to say, that he, the said Peter J. Claassen, being then and there such president as aforesaid, did, without the knowledge and consent of the said national banking association or of its board of directors, cause to be placed to the credit of the said Lenox Hill bank upon the books of the said national banking association the said sum of two hundred and seven thousand eight hundred dollars, although, as he, the said Peter J. Claassen, then and there well knew, the said sum of two hundred and seven thousand eight hundred dollars then and there deposited with the said na-

tional banking association to the credit of the said Lenox Hill bank was not then and there the money, funds, and property of the said Lenox Hill bank, but, on the contrary, was the money, funds, and property of the said national banking association, and was not then and there due and owing from the said national banking association to the said Lexox Hill bank, and the repayment thereof to the said national banking association was not then and there in any way secured, and the said Lenox Hill bank had no manner of right and title to the same, he, the said Peter J. Claassen, then and there unlawfully devising and intending that the said Lexox Hill bank should appropriate and convert to its own use the said sum of two hundred and seven thousand eight hundred dollars from the moneys and funds of the said national banking association, which said sum of money was, upon and pursuant to the direction and authorization of him, the said Peter J. Claassen, thereafter, to wit, on the twenty-fifth day of January, in the year of our Lord one thousand eight hundred and ninety, paid by the said national banking association from and out of the moneys and funds of the said national banking association for the use and on account of the said Lenox Hill bank, and was then and there, to wit, on the twenty-fifth day of January, in the year of our Lord one thousand eight hundred and ninety, appropriated and converted to the use, benefit, and advantage of the said Lexox Hill bank, against the peace of the United States and their dignity and contrary to the form of the statute of the said United States in such case made and provided.

48 *Thirtieth Count.*

And the jurors aforesaid on their oath aforesaid do further present that Peter J. Claassen, late of the city and county of New York, in the district and circuit aforesaid, yeoman, heretofore, to wit, on the twenty-fourth day of January, in the year of our Lord one thousand eight hundred and ninety, at the southern district of New York and within the jurisdiction of this court, being then and there an agent of a certain national banking association then and there known and designated as the Sixth National Bank of the City of New York, which said association had been theretofore created and organized under and by virtue of an act of Congress entitled "An act to provide a national currency secured by a pledge of United States bonds and to provide for the circulation and redemption thereof," approved June third, in the year of our Lord one thousand eight hundred and sixty-four, and which said association was then and there acting and carrying on a banking business at the city of New York, in the said district; under the said act of Congress and acts amendatory thereof, did, wilfully and unlawfully and with intent to injure and defraud the said association, misapply and convert to the use, benefit, and advantage of the Lenox Hill bank, then and there being a banking corporation which had been theretofore created and organized under the laws of the State of New York and was then and there acting and carrying on a

banking business at the city of New York, in the district aforesaid, certain moneys and funds, to wit, the sum of two hundred and seven thousand eight hundred dollars, then and there being the property of the said national banking association, in the manner and by the means following—that is to say, that he, the said Peter J. Claassen, being then and there such agent as aforesaid, did, without the knowledge and consent of the said national banking association or of its board of directors, cause to be placed to the credit of the said Lenox Hill bank upon the books of the said national banking association the said sum of two hundred and seven thousand eight hundred dollars, although, as he, the said Peter J. Claassen, then and there well knew, the said sum of two hundred and seven thousand eight hundred dollars then and there deposited with the said national banking association to the credit of the said Lenox Hill bank was not then and there the money, funds, and property of the said Lenox Hill bank, but, on the contrary, was the money, funds, and property of the said national banking association, and was not then and there due and owing from the said national banking association to the said Lenox Hill bank, and the repayment thereof to the said national banking association was not then and there in any way secured, and the said Lenox Hill bank had no manner of right and title to the same, he, the said Peter J. Claassen, then and there unlawfully devising and intending that the said Lenox Hill bank should appropriate and convert to its own use the said sum of two hundred and seven thousand eight hundred dollars from the moneys and funds of the said national banking association, which said sum of money was, upon and pursuant to the direction and authorization of him, the said Peter J. Claassen, thereafter, to wit, on the twenty-fifth day of January, in the year of our Lord one thousand eight hundred and ninety, paid by the said national banking association from and out of the moneys and funds of the said national banking association for the use and on account of the said Lenox Hill bank, and was then and there, to wit, on the twenty-fifth day of January, in the year of our Lord one thousand eight hundred and ninety, appropriated and converted to the use, benefit, and advantage of the said Lenox Hill bank, against the peace of the United States and their dignity and contrary to the form of the statute of the said United States in such case made and provided.

19 *Thirty-first Count.*

And the jurors aforesaid on their oath aforesaid do further present that Peter J. Claassen, late of the city and county of New York, in the district and circuit aforesaid, yeoman, heretofore, to wit, on the twenty-fourth day of January, in the year of our Lord one thousand eight hundred and ninety, at the southern district of New York and within the jurisdiction of this court, he, the said Peter J. Claassen, being then and there the president of a certain national banking association then and there known and designated as the Sixth National Bank of the City of New York, which said associa-

tion had been theretofore created and organized under and by virtue of an act of Congress entitled "An act to provide a national currency secured by a pledge of United States bonds and to provide for the circulation and redemption thereof," approved June third, in the year of our Lord one thousand eight hundred and sixty-four, and which said association was then and there acting and carrying on a banking business at the city of New York, in said district, under the said act of Congress and acts amendatory thereof, unlawfully and with the intent then and there on the part of him, the said Peter J. Claassen, to injure and defraud the said association and certain persons to the jurors aforesaid as yet unknown, did, without the authority of the board of directors of the said association, make in a certain book then and there belonging to and in use by the said association in transacting its said banking business and then and there known as Ledger L to Z, Number Twenty-eight, a certain entry, upon the folios of said book numbered fifty-two, under the title "Lenox Hill bank" and upon the credit side of said title, a certain entry in the words and figures following—that is to say, Jan'y 24, 1890, $207,800, and which said entry so as aforesaid made in said book then and there purported to show and did in substance and effect indicate and declare that the said Lenox Hill bank, then and there being a banking corporation organized and existing under the laws of the State of New York and carrying on a banking business in the city of New York, in the district aforesaid, had then and there deposited and placed with the said Sixth National bank and was then and there entitled to draw and have paid out of the moneys, funds, and credits of the said Sixth National Bank of the City of New York and to be then and there credited on the books of the said Sixth National bank with the said sum of
50 two hundred and seven thousand eight hundred dollars; and the jurors aforesaid upon their oaths aforesaid do further present that the said entry so made as aforesaid was then and there false in this, that the said sum of two hundred and seven thousand eight hundred dollars was not in fact then and there deposited and placed with the said association by the said Lenox Hill bank and the said Lenox Hill bank was not then and there entitled to draw and have paid out of the moneys, funds, and credits of the said association and to be then and there credited on the books of the said Sixth National Bank of the City of New York with the said sum, as he, the said Peter J. Claassen, then and there well knew, against the peace of the United States and their dignity and contrary to the form of the statute of the said United States in such case made and provided.

51 *Thirty-second Count.*

And the jurors aforesaid on their oath aforesaid do further present that Peter J. Claassen, late of the city and county of New York, in the district and circuit aforesaid, yeoman, heretofore, to wit, on the twenty-fourth day of January, in the year of our Lord one thousand eight hundred and ninety, at the southern district of New

York and within the jurisdiction of this court, he, the said Peter J. Claassen, being then and there an agent of a certain national banking association then and there known and designated as the Sixth National Bank of the City of New York, which said association had been theretofore created and organized under and by virtue of an act of Congress entitled "An act to provide a national currency secured by a pledge of United States bonds and to provide for the circulation and redemption thereof," approved June third, in the year of our Lord one thousand eight hundred and sixty-four, and which said association was then and there acting and carrying on a banking business at the city of New York, in said district, under the said act of Congress and acts amendatory thereof, unlawfully and with the intent then and there on the part of him, the said Peter J. Claassen, to injure and defraud the said association and certain persons to the jurors aforesaid as yet unknown, did, without the authority of the board of directors of the said association, make in a certain book then and there belonging to and in use by the said association in transacting its said banking business and then and there known as Ledger L to Z, Number Twenty-eight, a certain entry upon the folios of said book numbered fifty-two, under the title "Lenox Hill bank" and upon the credit side of said title, a certain entry in the words and figures following—that is to say, Jan'y 24, 1890, $207,800, and which said entry so as aforesaid made in said book then and there purported to show and did in substance and effect indicate and declare that the said Lenox Hill bank, then and there being a banking corporation organized and existing under the laws of the State of New York and carrying on a banking business in the city of New York, in the district aforesaid, had then and there deposited and placed with the said Sixth National bank and was then and there entitled to draw and have paid out out of the moneys, funds, and credits of the said Sixth National Bank of the City of New York and to be then and there credited on the books of the said Sixth National bank with the said sum of two hundred and seven
52 thousand eight hundred dollars; and the jurors aforesaid upon their oaths aforesaid do further present that the said entry so made as aforesaid was then and there false in this, that the said sum of two hundred and seven thousand eight hundred dollars was not in fact then and there deposited and placed with the said association by the said Lenox Hill bank and the said Lenox Hill bank was not then and there entitled to draw and have paid out of the moneys, funds, and credits of the said association and to be then and there credited on the books of the said Sixth National Bank of the City of New York with the said sum, as he, the said Peter J. Claassen, then and there well knew, against the peace of the United States and their dignity and contrary to the form of the statute of the said United States in such case made and provided.

53 *Thirty-third Count.*

And the jurors aforesaid on their oath aforesaid do further present that Peter J. Claassen, late of the city and county of New York, in

the district and circuit aforesaid, yeoman, heretofore, to wit, on the twenty-fourth day of January, in the year of our Lord one thousand eight hundred and ninety, at the southern district of New York and within the jurisdiction of this court, he, the said Peter J. Claassen, being then and there the president of a certain national banking association then and there known and designated as the Sixth National Bank of the City of New York, which said association had been theretofore created and organized under and by virtue of an act of Congress entitled "An act to provide a national currency secured by a pledge of United States bonds and to provide for the circulation and redemption thereof," approved June third, in the year of our Lord one thousand eight hundred and sixty-four, and which said association was then and there acting and carrying on a banking business at the city of New York, in said district, under the said act of Congress and acts amendatory thereof, unlawfully and with the intent then and there on the part of him, the said Peter J. Claassen, to deceive any agent who might be thereafter appointed by the Comptroller of the Currency to examine the affairs of the said association, did, without the authority of the board of directors of the said association, make in a certain book then and there belonging to and in use by the said association in transacting its said banking business and then and there known as Ledger L to Z, Number Twenty-eight, a certain entry upon the folios of said book numbered fifty-two, under the title "Lenox Hill bank" and upon the credit side of said title, a certain entry in the words and figures following—that is to say, Jan. 24, 1890, $207,800, and which said entry so as aforesaid made in said book then and there purported to show and did in substance and effect indicate and declare that the said Lenox Hill bank, then and there being a banking corporation organized and existing under the laws of the State of New York and carrying on a banking business in the city of New York, in the district aforesaid, had then and there deposited and placed with the said Sixth National bank and was then and there entitled to draw and have paid out of the moneys, funds, and credits of the said Sixth National Bank of the City of New York and to be then and there credited on the books of the said Sixth National bank with the said sum of two hundred and seven thousand eight hundred dollars;

54 and the jurors aforesaid upon their oaths aforesaid do further present that the said entry so made as aforesaid was then and there false in this, that the said sum of two hundred and seven thousand eight hundred dollars was not in fact then and there deposited and placed with the said association by the said Lenox Hill bank and the said Lenox Hill bank was not then and there entitled to draw and have paid out of the moneys, funds, and credits of the said association and to be then and there credited on the books of the said Sixth National Bank of the City of New York with the said sum, as he, the said Peter J. Claassen, then and there well knew, against the peace of the United States and their dignity and contrary to the form of the statute of the said United States in such case made and provided.

55 *Thirty-fourth Count.*

And the jurors aforesaid on their oath aforesaid do further present that Peter J. Claassen, late of the city and county of New York, in the district and circuit aforesaid, yeoman, heretofore, to wit, on the twenty-fourth day of January, in the year of our Lord one thousand eight hundred and ninety, at the southern district of New York and within the jurisdiction of this court, he, the said Peter J. Claassen, being then and there an agent of a certain national banking association then and there known and designated as the Sixth National Bank of the City of New York, which said association had been theretofore created and organized under and by virtue of an act of Congress entitled "An act to provide a national currency secured by a pledge of United States bonds and to provide for the circulation and redemption thereof," approved June third, in the year of our Lord one thousand eight hundred and sixty-four, and which said association was then and there acting and carrying on a banking business at the city of New York, in said district, under the said act of Congress and acts amendatory thereof, unlawfully and with the intent then and there on the part of him, the said Peter J. Claassen, to deceive any agent who might be thereafter appointed by the Comptroller of the Currency to examine the affairs of the said association, did, without the authority of the board of directors of the said association, make in a certain book then and there belonging to and in use by the said association in transacting its said banking business and then and there known as Ledger L to Z, Number Twenty-Eight, a certain entry upon the folios of said book numbered fifty-two, under the title "Lenox Hill bank" and upon the credit side of said title, a certain entry in the words and figures following—that is to say, Jan'y 24, 1890, $207,800, and which said entry so as aforesaid made in said book then and there purported to show and did in substance and effect indicate and declare that the said Lenox Hill bank, then and there being a banking corporation organized and existing under the laws of the State of New York and carrying on a banking business in the city of New York, in the district aforesaid, had then and there deposited and placed with the said Sixth National bank and was then and there entitled to draw and have paid out of the moneys, funds, and credits of the said Sixth National Bank of the City of New York and to be then and there credited on the books of the said Sixth National bank

56 with the said sum of two hundred and seven thousand eight hundred dollars; and the jurors aforesaid upon their oaths aforesaid do further present that the said entry so made as aforesaid was then and there false in this, that the said sum of two hundred and seven thousand eight hundred dollars was not in fact then and there deposited and placed with the said association by the said Lenox Hill bank and the said Lenox Hill bank was not then and there entitled to draw and have paid out of the moneys, funds, and credits of the said association and to be then and there credited on the books of the Sixth National Bank of the City of New York with the said sum, as he, the said Peter J. Claassen, then

and there well knew, against the peace of the United States and their dignity and contrary to the form of the statute of the said United States in such case made and provided.

57 *Thirty-fifth Count.*

And the jurors aforesaid on their oath aforesaid do further present that Peter J. Claassen, late of the city and county of New York, in the district and circuit aforesaid, yeoman, heretofore, to wit, on the twenty-seventh day of January, in the year of our Lord one thousand eight hundred and ninety, at the southern district of New York and within the jurisdiction of this court, being then and there the president of a certain national banking association then and there known and designated as the Sixth National Bank of the City of New York, which said association had been theretofore created and organized under and by virtue of an act of Congress entitled "An act to provide a national currency secured by a pledge of United States bonds and to provide for the circulation and redemption thereof," approved June third, in the year of our Lord one thousand eight hundred and sixty-four, and which said association was then and there acting and carrying on a banking business at the city of New York, in the said district, under the said act of Congress and acts amendatory thereof, did, wilfully and unlawfully and with intent to injure and defraud the said association, misapply and convert to the use, benefit, and advantage of himself, the said Peter J. Claassen, and one James A. Simmons certain moneys and funds then and there being the property of the said association, to wit, the sum of six hundred and fifty-three thousand five hundred dollars, in the manner and by the means following—that is to say, that he, the said Peter J. Claassen, being then and there such president as aforesaid, did, without the knowledge and consent of the said association and without the knowledge and consent of its board of directors, cause to be paid to the said James A. Simmons out of the moneys and funds then and there belonging to and the property of the said association the said sum of six hundred and fifty-three thousand five hundred dollars to enable the said James A. Simmons to pay for one thousand and five and one-half shares of the capital stock of the said association, which said shares of stock had been theretofore purchased by the said James A. Simmons from one Charles H. Leland for the use, benefit, and advantage of the said Peter J. Claassen and the said James A. Simmons, as he, the said Peter J. Claassen, then and there well knew, which said shares of stock were at the time of such purchase by the said James A. Simmons as aforesaid represented upon the books of the said association to be and were the property of the said Charles H. Leland, he, the said Peter J. Claassen, then and there, to wit, on the twenty-seventh day of January, in the year of our Lord one thousand eight hundred and ninety, well knowing that the said sum of six hundred and fifty-three thousand five hundred dollars was not then and there on deposit with the said association to the credit of him, the said James A. Simmons, and was not then and there due and owing from the said association to the

said James A. Simmons, and the repayment thereof to the said association was not then and there in any way secured, and the said James A. Simmons had no manner of right and title to the same, against the peace of the United States and their dignity and contrary to the form of the statute of the said United States in such case made and provided.

58 *Thirty-sixth Count.*

And the jurors aforesaid on their oath aforesaid do further present that Peter J. Claassen, late of the city and county of New York, in the district and circuit aforesaid, yeoman, heretofore, to wit, on the twenty-seventh day of January, in the year of our Lord one thousand eight hundred and ninety, at the southern district of New York and within the jurisdiction of this court, being then and there an agent of a certain national banking association then and there known and designated as the Sixth National Bank of the City of New York, which said association had been theretofore created and organized under and by virtue of an act of Congress entitled "An act to provide a national currency secured by a pledge of United States bonds and to provide for the circulation and redemption thereof," approved June third, in the year of our Lord one thousand eight hundred and sixty-four, and which said association was then and there acting and carrying on a banking business at the city of New York, in the said district, under the said act of Congress and acts amendatory thereof, did, wilfully and unlawfully and with intent to injure and defraud the said association, misapply and convert to the use, benefit, and advantage of himself, the said Peter J. Claassen, and one James A. Simmons certain moneys and funds then and there being the property of the said association, to wit, the sum of six hundred and fifty-three thousand five hundred dollars, in the manner and by the means following—that is to say, that he, the said Peter J. Claassen, being then and there such agent as aforesaid, did, without the knowledge and consent of the said association and without the knowledge and consent of its board of directors, cause to be paid to the said James A. Simmons out of the moneys and funds then and there belonging to and the property of the said association the said sum of six hundred and fifty-three thousand five hundred dollars to enable the said James A. Simmons to pay for one thousand and five and one-half shares of the capital stock of the said association, which said shares of stock had been theretofore purchased by the said James A. Simmons from one Charles H. Leland for the use, benefit, and advantage of the said Peter J. Claassen and the said James A. Simmons, as he, the said Peter J. Claassen, then and there well knew, which said shares of stock were at the time of such purchase by the said James A. Simmons as aforesaid represented upon the books of the said association to be and were the property of the said Charles H. Leland, he, the said Peter J. Claassen, then and there, to wit, on the twenty-seventh day of January, in the year of our Lord one thousand eight hundred and ninety, well knowing that the said sum of six hundred

and fifty-three thousand five hundred dollars was not then and there on deposit with the said association to the credit of him, the said James A. Simmons, and was not then and there due and owing from said association to the said James A. Simmons, and the repayment thereof to the said association was not then and there in any way secured, and the said James A. Simmons had no manner of right and title to the same, against the peace of the United States and their dignity and contrary to the form of the statute of the said United States in such case made and provided.

59 *Thirty-seventh Count.*

And the jurors aforesaid on their oath aforesaid do further present that Peter J. Claassen, late of the city and county of New York, in the district and circuit aforesaid, yeoman, heretofore, to wit, on the twenty-seventh day of January, in the year of our Lord one thousand eight hundred and ninety, at the southern district of New York and within the jurisdiction of this court, being then and there the president of a certain national banking association then and there known and designated as the Sixth National Bank of the City of New York, which said association had been theretofore created and organized under and by virtue of an act of Congress entitled "An act to provide a national currency secured by a pledge of United States bonds and to provide for the circulation and redemption thereof," approved June third, in the year of our Lord one thousand eight hundred and sixty-four, and which said association was then and there acting and carrying on a banking business at the city of New York, in the said district, under the said act of Congress and acts amendatory thereof, did, wilfully and unlawfully and with intent to injure and defraud the said association, misapply and convert to the use, benefit, and advantage of one James A. Simmons certain moneys and funds then and there being the property of the said association, to wit, the sum of six hundred and fifty-three thousand five hundred dollars, in the manner and by the means following—that is to say, that he, the said Peter J. Claassen, being then and there such president as aforesaid, did, without the knowledge and consent of the said association and without the knowledge and consent of its board of directors, cause to be paid to the said James A. Simmons out of the moneys and funds then and there belonging to and the property of the said association the said sum of six hundred and fifty-three thousand five hundred dollars to reimburse the said James A. Simmons for the payment theretofore made by the said James A. Simmons to one Charles H. Leland of the sum of six hundred and fifty-three thousand five hundred dollars in the purchase by him, the said James A. Simmons, from the said Charles H. Leland of one thousand and five and one half shares of the capital stock of the said association for the use, benefit, and advantage of the said Peter J. Claassen and the said James A. Simmons, as he, the said Peter J. Claassen, then and there well knew, which said shares of stock were at the time of their purchase as aforesaid represented upon the books of said association to be and were the prop-

erty of the said Charles H. Leland, he, the said Peter J. Claassen, then and there, to wit, on the twenty-seventh day of January, in the year of our Lord one thousand eight hundred and ninety, well knowing that the said sum of six hundred and fifty-three thousand five hundred dollars was not then and there on deposit with the said association to the credit of him, the said James A. Simmons, and was not then and there due and owing from the said association to the said James A. Simmons, and the payment thereof to the said association was not then and there in any way secured, and the said James A. Simmons had no manner of right and title to the same, against the peace of the United States and their dignity and contrary to the form of the statute of the said United States in such case made and provided.

60 *Thirty-eighth Count.*

And the jurors aforesaid on their oath aforesaid do further present that Peter J. Claassen, late of the city and county of New York, in the district and circuit aforesaid, yeoman, heretofore, to wit, on the twenty-seventh day of January, in the year of our Lord one thousand eight hundred and ninety, at the southern district of New York and within the jurisdiction of this court, being then and there the agent of a certain national banking association then and there known and designated as the Sixth National Bank of the City of New York, which said association had been theretofore created and organized under and by virtue of an act of Congress entitled "An act to provide a national currency secured by a pledge of United States bonds and to provide for the circulation and redemption thereof," approved June third, in the year of our Lord one thousand eight hundred and sixty-four, and which said association was then and there acting and carrying on a banking business at the city of New York, in the said district, under the said act of Congress and acts amendatory thereof, did, wilfully and unlawfully and with intent to injure and defraud the said association, misapply and convert to the use, benefit, and advantage of one James A. Simmons certain moneys and funds then and there being the property of the said association, to wit, the sum of six hundred and fifty-three thousand five hundred dollars, in the manner and by the means following—that is to say, that he, the said Peter J. Claassen, being then and there such agent as aforesaid, did, without the knowledge and consent of the said association and without the knowledge and consent of its board of directors, cause to be paid to the said James A. Simmons out of the moneys and funds then and there belonging to and the property of the said association the said sum of six hundred and fifty-three thousand five hundred dollars to reimburse the said James A. Simmons for the payment theretofore made by the said James A. Simmons to one Charles H. Leland of the sum of six hundred and fifty-three thousand five hundred dollars in the purchase by him, the said James A. Simmons, from the said Charles H. Leland of one thousand and five and one-half shares of the capital stock of the said association for the use, benefit, and advantage of

the said Peter J. Claassen and the said James A. Simmons, as he, the said Peter J. Claassen, then and there well knew, which said shares of stock were at the time of their purchase as aforesaid represented upon the books of said association to be and were the property of the said Charles H. Leland, he, the said Peter J. Claassen, then and there, to wit, on the twenty-seventh day of January, in the year of our Lord one thousand eight hundred and ninety, well knowing that the said sum of six hundred and fifty-three thousand five hundred dollars was not then and there on deposit with the said association to the credit of him, the said James A. Simmons, and was not then and there due and owing from the said association to the said James A. Simmons, and the payment thereof to the said association was not then and there in any way secured, and the said James A. Simmons had no manner of right and title to the same, against the peace of the United States and their dignity and contrary to the form of the statute of the said United States in such case made and provided.

61 *Thirty-ninth Count.*

And the jurors aforesaid on their oath aforesaid do further present that Peter J. Claassen, late of the city and county of New York, in the district and circuit aforesaid, yeoman, heretofore, to wit, on the twenty-second day of January, in the year of our Lord one thousand eight hundred and ninety, at the southern district of New York and within the jurisdiction of this court, being then and there the president of a certain national banking association then and there known and designated as the Sixth National Bank of the City of New York, which said association had been theretofore created and organized under and by virtue of an act of Congress entitled "An act to provide a national currency secured by a pledge of United States bonds and to provide for the circulation and redemption thereof," approved June third, in the year of our Lord one thousand eight hundred and sixty-four, and which said association was then and there acting and carrying on a banking business at the city of New York, in said district, under the said act of Congress and acts amendatory thereof, did, wilfully and unlawfully and with intent to injure and defraud the said association, misapply and convert to the use, benefit, and advantage of one James A. Simmons certain moneys and funds then and there being the property of the said association, to wit, the sum of sixty thousand dollars, in the manner and by the means following—that is to say, that he, the said Peter J. Claassen, being then and there such president as aforesaid, did, without the knowledge and consent of the said association and without the knowledge and consent of its board of directors, cause to be paid to the said James A. Simmons out of the moneys and funds then and there belonging to and the property of the said association the said sum of sixty thousand dollars to reimburse the said James A. Simmons for the payment theretofore made by the said James A. Simmons to one Charles H. Leland of the sum of sixty thousand dollars in the pur-

chase by him, the said James A. Simmons, from the said Charles H. Leland of one thousand and five and one-half shares of the capital stock of the said association for the use, benefit, and advantage of the said Peter J. Claassen and the said James A. Simmons, as he, the said Peter J. Claassen, then and there well knew, which said shares of stock were at the time of their purchase as aforesaid represented upon the books of said association to be and were the property of the said Charles H. Leland, he, the said Peter J. Claassen, then and there, to wit, on the twenty-second day of January, in the year of our Lord one thousand eight hundred and ninety, well knowing that the said sum of sixty thousand dollars was not then and there on deposit with the said association to the credit of him, the said James A. Simmons, and was not then and there due and owing from the said association to the said James A. Simmons, and the payment thereof to the said association was not then and there in any way secured, and the said James A. Simmons had no manner of right and title to the same, against the peace of the United States and their dignity and contrary to the form of the statute of the said United States in such case made and provided.

62 *Fortieth Count.*

And the jurors aforesaid on their oath aforesaid do further present that Peter J. Claassen, late of the city and county of New York, in the district and circuit aforesaid, yeoman, heretofore, to wit, on the twenty-second day of January, in the year of our Lord one thousand eight hundred and ninety, at the southern district of New York and within the jurisdiction of this court, being then and there an agent of a certain national banking association then and there known and designated as the Sixth National Bank of the City of New York, which said association had been theretofore created and organized under and by virtue of an act of Congress entitled "An act to provide a national currency secured by a pledge of United States bonds and to provide for the circulation and redemption thereof," approved June third, in the year of our Lord one thousand eight hundred and sixty-four, and which said association was then and there acting and carrying on a banking business at the city of New York, in the said district, under the said act of Congress and acts amendatory thereof, did, wilfully and unlawfully and with intent to injure and defraud the said association, misapply and convert to the use, benefit, and advantage of one James A. Simmons certain moneys and funds then and there being the property of the said association, to wit, the sum of sixty thousand dollars, in the manner and by the means following—that is to say,

63 that he, the said Peter J. Claassen, being then and there such agent as aforesaid, did, without the knowledge and consent of the said association and without the knowledge and consent of its board of directors, cause to be paid to the said James A. Simmons, out of the moneys and funds then and there belonging to and the property of the said association, the said sum of sixty thousand dollars to reimburse the said James A. Simmons for the

payment theretofore made by the said James A. Simmons to one Charles H. Leland of the sum of sixty thousand dollars in the purchase by him, the said James A. Simmons, from the said Charles H. Leland of one thousand and five and one-half shares of the capital stock of the said association for the use, benefit, and advantage of the said Peter J. Claassen and the said James A. Simmons, as he, the said Peter J. Claassen, then and there well knew, which said shares of stock were at the time of their purchase as aforesaid represented upon the books of said association to be and were the property of the said Charles H. Leland, he, the said Peter J. Claassen, then and there, to wit, on the twenty-second day of January, in the year of our Lord one thousand eight hundred and ninety, well knowing that the said sum of sixty thousand dollars was not then and there on deposit with the said association to the credit of him, the said James A. Simmons, and was not then and there due and owing from the said association to the said James A. Simmons, and the payment thereof to the said association was not then and there in any way secured, and the said James A. Simmons had no manner of right and title to the same, against the peace of the United States and their dignity and contrary to the form of the statute of the said United States in such case made and provided.

64 *Forty-first Count.*

And the jurors aforesaid on their oath aforesaid do further present that Peter J. Claassen, late of the city and county of New York, in the district and circuit aforesaid, yeoman, heretofore, to wit, on the twenty-second day of January, in the year of our Lord one thousand eight hundred and ninety, at the southern district of New York and within the jurisdiction of this court, being then and there the president of a certain national banking association then and there known and designated as the Sixth National Bank of the City of New York, which said association had been theretofore created and organized under and by virtue of an act of Congress entitled "An act to provide a national currency secured by a pledge of United States bonds and to provide for the circulation and redemption thereof," approved June third, in the year of our Lord one thousand eight hundred and sixty-four, and which said association was then and there acting and carrying on a banking business at the city of New York, in the said district, under the said act of Congress and acts amendatory thereof, did, wilfully and unlawfully and with intent to injure and defraud the said association, misapply and convert to the use, benefit, and advantage of himself, the said Peter J. Claassen, and one James A. Simmons certain moneys and funds then and there being the property of the said association, to wit, the sum of sixty thousand dollars, in the manner and by the means following—that is to say, that he, the said Peter J. Claassen, being then and there such president as aforesaid, did, without the
65 knowledge and consent of the said association and without the knowledge and consent of its board of directors, cause to

be paid to the said James A. Simmons, out of the moneys and funds then and there belonging to and the property of the said association, the said sum of sixty thousand dollars to enable the said James A. Simmons to pay for one thousand and five and one-half shares of the capital stock of the said association, which said shares of stock had been theretofore purchased by the said James A. Simmons from one Charles H. Leland for the use, benefit, and advantage of the said Peter J. Claassen and the said James A. Simmons, as he, the said Peter J. Claassen, then and there well knew, which said shares of stock were at the time of such purchase by the said James A. Simmons as aforesaid represented upon the books of the said association to be and were the property of the said Charles H. Leland, he, the said Peter J. Claassen, then and there, to wit, on the twenty-second day of January, in the year of our Lord one thousand eight hundred and ninety, well knowing that the said sum of sixty thousand dollars was not then and there on deposit with the said association to the credit of him, the said James A. Simmons, and was not then and there due and owing from the said association to the said James A. Simmons, and the repayment thereof to the said association was not then and there in any way secured, and the said James A. Simmons had no manner of right and title to the same, against the peace of the United States and their dignity and contrary to the form of the statute of the said United States in such case made and provided.

66 *Forty-second Count.*

And the jurors aforesaid on their oath aforesaid do further present that Peter J. Claassen, late of the city and county of New York, in the district and circuit aforesaid, yeoman, heretofore, to wit, on the twenty-second day of January, in the year of our Lord one thousand eight hundred and ninety, at the southern district of New York and within the jurisdiction of this court, being then and there an agent of a certain national banking association then and there known and designated as the Sixth National Bank of the City of New York, which said association had been theretofore created and organized under and by virtue of an act of Congress entitled "An act to provide a national currency secured by a pledge of United States bonds and to provide for the circulation and redemption thereof," approved June third, in the year of our Lord one thousand eight hundred and sixty-four, and which said association was then and there acting and carrying on a banking business at the city of New York, in the said district, under the said act of Congress and acts amendatory thereof, did, wilfully and unlawfully and with intent to injure and defraud the said association, misapply and convert to the use, benefit, and advantage of himself, the said Peter J. Claassen, and one James A. Simmons certain moneys and funds then and there being the property of the said association, to wit, the sum of sixty thousand dollars, in the manner and by the means following—that is to say, that he, the said Peter J. Claassen, being

then and there such agent as aforesaid, did, without the
67 knowledge and consent of the said association and without the knowledge and consent of its board of directors, cause to be paid to the said James A. Simmons, out of the moneys and funds then and there belonging to and the property of the said association, the said sum of sixty thousand dollars to enable the said James A. Simmons to pay for one thousand and five and one-half shares of the capital stock of the said association, which said shares of stock had been theretofore purchased by the said James A. Simmons from one Charles H. Leland for the use, benefit, and advantage of the said Peter J. Claassen and the said James A. Simmons, as he, the said Peter J. Claassen, then and there well knew, which said shares of stock were at the time of such purchase by the said James A. Simmons as aforesaid represented upon the books of the said association to be and were the property of the said Charles H. Leland, he, the said Peter J. Claassen, then and there, to wit, on the twenty-second day of January, in the year of our Lord one thousand eight hundred and ninety, well knowing that the said sum of sixty thousand dollars was not then and there on deposit with the said association to the credit of him, the said James A. Simmons, and was not then and there due and owing from the said association to the said James A. Simmons, and the repayment thereof to the said association was not then and there in any way secured, and the said James A. Simmons had no manner of right and title to the same, against the peace of the United States and their dignity and contrary to the form of the statute of the said United States in such case made and provided.

68 *Forty-third Count.*

And the jurors aforesaid on their oath aforesaid do further present that Peter J. Claassen, late of the city and county of New York, in the district and circuit aforesaid, yeoman, heretofore, to wit, on the twenty-seventh day of January, in the year of our Lord one thousand eight hundred and ninety, at the southern district of New York and within the jurisdiction of this court, being then and there the president of a certain national banking association then and there known and designated as the Sixth National Bank of the City of New York, which said association had been theretofore created and organized under and by virtue of an act of Congress entitled "An act to provide a national currency secured by a pledge of United States bonds and to provide for the circulation and redemption thereof," approved June third, in the year of our Lord one thousand eight hundred and sixty-four, and which said association was then and there acting and carrying on a banking business at the city of New York, in the said district, under the said act of Congress and acts amendatory thereof, did, unlawfully and wilfully and without the knowledge and consent of the said association and its board of directors and with intent to injure and defraud the said association, abstract and convert to the use, benefit, and advantage of himself, the said Peter J. Claassen, and divers other persons, to the jurors aforesaid as yet

unknown, other than the said association, certain funds and credits then and there being the property of the said association, of the amount and value of fifteen thousand two hundred and forty dollars, to wit, certain coupons and written obligations of divers railroad and railway corporations, a more particular description of which said coupons and written obligations is to the jurors aforesaid as yet unknown, against the peace of the United States and their dignity and contrary to the form of the statute of the said United States in such case made and provided.

69 *Forty-fourth Count.*

And the jurors aforesaid on their oath aforesaid do further present that Peter J. Claassen, late of the city and county of New York, in the district and circuit aforesaid, yeoman, heretofore, to wit, on the twenty-seventh day of January, in the year of our Lord one thousand eight hundred and ninety, at the southern district of New York and within the jurisdiction of this court, being then and there an agent of a certain national banking association then and there known and designated as the Sixth National Bank of the City of New York, which said association had been theretofore created and organized under and by virtue of an act of Congress entitled "An act to provide a national currency secured by a pledge of United States bonds and to provide for the circulation and redemption thereof," approved June third, in the year of our Lord one thousand eight hundred and sixty-four, and which said association was then and there acting and carrying on a banking business at the city of New York, in the said district, under the said act of Congress and acts amendatory thereof, did, unlawfully and wilfully and without the knowledge and consent of the said association and its board of directors and with intent to injure and defraud the said association, abstract and convert to the use, benefit, and advantage of himself, the said Peter J. Claassen, and divers other persons, to the jurors aforesaid as yet unknown, other than the said association, certain funds and credits then and there being the property of the said association, of the amount and value of fifteen thousand two hundred and forty dollars, to wit, certain coupons and written obligations of divers railroad and railway corporations, a more particular description of which said coupons and written obligations is to the jurors aforesaid as yet unknown, against the peace of the United States and their dignity and contrary to the form of the statute of the said United States in such case made and provided.

EDWARD MITCHELL,
U. S. Attorney.

70 Endorsed: U. S. circuit court. Feb. 8. Def't's Exhibit B. Filed in open court the 1st April, 1890. April, 1890, the defendant arraigned and indict. read. Def't pleads not guilty with leave, etc., by Apr. 11, '90, at 2 p. m. Apr. 11, '90, time ext'd to Apr. 14, '90, at 10 a. m. Apr. 14, '90, def't demurs to each and every count of indictment, except 31st, 32nd, 33rd, & 34th; as to

last named, plea of n. g. to stand. Apr. 17, '90, demurrer argued. Apr. 24, '90, filed decision of Benedict, J., overruling demurrer and ordering defendant to plead to the indictment on Monday, April 28, 1890, at 10 o'clock a. m. April 28, 1890, def't rearraigned and pleads not guilty to all the counts in the indictment contained. Trial set down for Wednesday, May 7, 1890, at 11 a. m. '90, May 8, trial commenced. May 28, trial concluded. Verdict, guilty (for verdict see minutes). 1891, March 18, sentenced to six (6) years in prison, sentence to be executed at Erie county penitentiary.

Endorsed: U. S. circuit court. The United States of America *vs.* Peter J. Claassen. Indictment: Embezzling, abstracting, and misapplying the funds of a national bank & making false entry U. S. Rev. St., section 5209. Edward Mitchell, U. S. district attorney. A true bill. Edgar S. Ryder, foreman. Filed in court April 1, 1890.

71 United States Circuit Court, Southern District of New York.

THE UNITED STATES
vs.
PETER J. CLAASSEN.

And the said Peter J. Claassen comes into court here and, having heard the said indictment read, says that the counts in said indictment numbered one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven, twenty-eight, twenty-nine, thirty, thirty-five, thirty-six, thirty-seven, thirty-eight, thirty-nine, forty, forty-one, forty-two, forty-three, forty-four, and the matters therein contained in manner and form as the same are therein stated and set forth are not sufficient in law, and that he is not bound by the law of the land to answer the same; and this he is ready to verify.

Wherefore he prays judgment and that he may be dismissed and discharged from the said premises in the said counts of the indictment specified.

Dated April 14, 1890.

By his attorney,

BENJ. B. FOSTER.

72 Endorsed: U. S. circuit court, so. dist. of New York. The Uniten States *vs.* Peter J. Claassen. Demurrer. U. S. circuit court. Filed Apr. 14, 1890. John A. Shields, clerk.

73 U. S. Circuit Court.

THE UNITED STATES
vs.
PETER J. CLAASSEN.

The demurrer in this case is overruled, and the defendant is or-

dered to plead to the indictment on Monday, the 28th of April instant, at ten o'clock a. m.

Ap'l 24, 1890.

CHAS. L. BENEDICT.

Endorsed: Circuit court of the United States for the southern district of New York. The United States *vs.* Peter J. Claassen. Decision and order, Benedict, J. U. S. circuit court. Filed Apr. 24, 1890. John A. Shields, clerk.

74 U. S. Circuit Court.

THE UNITED STATES
vs.
CLAASSEN. } July 5, 1890.

BENEDICT, *J.*:

In this case application is made by the defendant to postpone the hearing of the motion in arrest of judgment and for a new trial until the October term, upon the ground that the counsel mainly responsible for the conduct of the defense at the trial is compelled to join his family in Europe and will be unable to take part in the argument unless the same be postponed until the time of his return.

The defendant is now imprisoned, and accompanies the application for a postponement with a waiver of any right to apply to be released from confinement on bail. The district attorney declines to consent to the postponement. It seems to me, however, that the desire of the accused to have the counsel mainly responsible for the conduct of his defense at the trial already had take part in argument for a new trial is reasonable, and inasmuch as the accused is now confined in prison, and since his waiver must remain in confinement during the delay applied for, I am unable to see that the cause of justice will suffer by granting the application.

75 The motion for a new trial and in arrest of judgment is therefore set down to be argued on the first day of the October term.

Endorsed: Circuit court U. S., south. dist. N. Y. The United States *vs.* Claassen. Decision, Benedict, J. U. S. circuit court. Filed Jul- 5, 1890. John A. Shields, clerk.

76 United States Circuit Court, Southern District of New York.

THE UNITED STATES
against
PETER J. CLAASSEN.

The defendant was indicted, tried, and convicted under section 5209 U. S. Revised Statutes.

The counts of the indictment upon which a verdict of guilty was rendered are the following:

First Count.

"The jurors of the United States of America within and for the district and circuit aforesaid on their oath present that Peter J. Claassen, late of the city and county of New York, in the district and circuit aforesaid, yeoman, heretofore, to wit, on the twenty-third day of January, in the year of our Lord one thousand eight hundred and ninety, at the southern district of New York and within the jurisdiction of this court, he, the said Peter J. Claassen, being then and there the president of a certain national banking association then and there known and designated as the Sixth National Bank of the City of New York, which said association had been theretofore created and organized under and by virtue of an act of Congress entitled "An act to provide a national currency secured by a pledge of
77 United States bonds and to provide for the circulation and redemption thereof," approved June third, in the year of our Lord one thousand eight hundred and sixty-four, and which said association was then and there acting and carrying on a banking business at the city of New York, in the said district, under the said act of Congress and acts amendatory thereof, did, by virtue of his said office and employment and while he was so employed and acting as such president as aforesaid, receive and take into his possession certain funds and credits, to wit:

Ten bonds and written obligations of the Saint Louis and San Francisco Railway Company of the kind called general mortgage bonds of the denomination and value of one thousand dollars each.

Thirty-one bonds and written obligations of the New York Elevated Railroad Company of the kind called first-mortgage bonds of the denomination and value of one thousand dollars each.

Fifteen bonds and written obligations of the Canada Southern Railway Company of the kind called first-mortgage bonds of the denomination and value of one thousand dollars each.

Twenty bonds and written obligations of the Chicago, Milwaukee and Saint Paul Railway Company of the kind called terminal bonds of the denomination and value of one thousand dollars each.

Twenty bonds and written obligations of the Chicago, Milwaukee and Saint Paul Railway Company of the kind called consolidated bonds of the denomination and value of one thousand dollars each.

Thirty bonds and written obligations of the Milwaukee and Saint Paul Railway Company of the kind called consolidated bonds of the denomination and value of one thousand dollars each.

Ten bonds and written obligations of the Milwaukee and Saint Paul Railway Company of the kind called La Crosse Division bonds of the denomination and value of one thousand dollars each.

78 Ten bonds and written obligations of the Spokane Falls

and Northern railroad of the kind called first-mortgage bonds of the denomination and value of one thousand dollars each.

Sixty bonds and written obligations of the Union Pacific Railway Company of the kind called first-mortgage bonds of the denomination and value of one thousand dollars each.

Fifty-five bonds and written obligations of the Metropolitan Elevated Railway Company of the kind called first-mortgage bonds of the denomination and value of one thousand dollars each.

Fifteen bonds and written obligations of the Central Pacific Railway Company of the kind called first-mortgage bonds of the denomination and value of one thousand dollars each.

Forty-six bonds and written obligations of the Union Pacific Railway Company of the kind called collateral trust bonds of the denomination and value of one thousand dollars each.

Ten bonds and written obligations of the Cœur de Alene Railway Company and Navigation Company of the kind called general first-mortgage bonds of the denomination and value of one thousand dollars each.

Ten bonds and written obligations of the Saint Paul and Sioux City railroad of the kind called first-mortgage bonds of the denomination and value of one thousand dollars each.

Twenty-five bonds and written obligations of the Central Pacific railway, San Joaquin Railroad Company, of the kind called first-mortgage bonds of the denomination and value of one thousand dollars each.

Ten bonds and written obligations of the Saint Paul, Minneapolis and Manitoba Railway Company of the kind called second-mortgage bonds of the denomination and value of one thousand dollars each.

79 Twenty-five bonds and written obligations of the Chicago, Burlington and Quincy Railroad Company of the kind called sinking-fund bonds of the denomination and value of one thousand dollars each.

Forty-six bonds and written obligations of the Chicago and Northwestern Railway Company of the kind called debenture bonds of the denomination and value of one thousand dollars each.

Sixty bonds and written obligations of the Chicago, Burlington and Quincy Railroad Company of the kind called debenture bonds of the denomination and value of one thousand dollars each.

Ten bonds and written obligations of the Lake Shore and Michigan Southern Railway Company of the kind called second-mortgage bonds of the denomination and value of one thousand dollars each.

Ten bonds and written obligations of the Chicago and Northwestern Railway Company of the kind called gold first-mortgage bonds of the denomination and value of one thousand dollars each.

Ten bonds and written obligations of the New York, Lake Erie and Western Railway Company of the kind called funded bonds of the denomination and value of one thousand dollars each.

Ten bonds and written obligations of the Chicago, Saint Paul, Minneapolis and Omaha Railway Company of the kind called

second-mortgage bonds of the denomination and value of one thousand dollars each.

Five bonds and written obligations of the Burlington, Cedar Rapids and Northern Railway Company of the kind called first-mortgage bonds of the denomination and value of one thousand dollars each.

Four bonds and written obligations of the Texas Pacific Railway Company of the kind called second-mortgage bonds of the denomination and value of one thousand dollars each.

Forty-five bonds and written obligations of the Oregon
80 Short Line Railway Company of the kind called first-mortgage bonds of the denomination and value of one thousand dollars each.

Ten bonds and written obligations of the Louisville, New Albany and Chicago Railway Company of the kind called first-mortgage bonds of the denomination and value of one thousand dollars each.

Ten bonds and written obligations of the Richmond and West Point Terminal Railway and Warehouse Company of the kind called consolidated first-mortgage gold trust bonds of the denomination and value of one thousand dollars each, then and there being the property of the said association, and which he held for and in the name and on account of the said association, and did then and there, wilfully and unlawfully and with intent to injure and defraud the said association, embezzle the said bonds and written obligations and convert them to his own use, against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided.

Nineteenth Count.

And the jurors aforesaid on their oath aforesaid do further present that Peter J. Claassen, late of the city and county of New York, in the district and circuit aforesaid, yeoman, heretofore, to wit, on the twenty-second day of January, in the year of our Lord one thousand eight hundred and ninety, at the southern district of New York and within the jurisdiction of this court, being then and there the president of a certain national banking association then and there known and designated as the Sixth National Bank of the City of New York, which said association had been theretofore created and organized under and by virtue of an act of Congress entitled "An act to provide a national currency secured by a pledge of United
States bonds and to provide for the circulation and redemp-
81 tion thereof," approved June third, in the year of our Lord one thousand eight hundred and sixty-four, and which said association was then and there acting and carrying on a banking business at the city of New York, in the said district, under the said act of Congress and acts amendatory thereof, did, wilfully and unlawfully and with intent to injure and defraud the said association, misapply and convert to the use, benefit, and advantage of one James A. Simmons certain moneys and funds then and there being the property of the said association, to wit, the sum of sixty thou-

sand dollars, in the manner and by the means following—that is to say, he, the said Peter J. Claassen, being then and there such president as aforesaid, did, without the knowledge and consent of said association or its board of directors, procure the making by one Andrew E. Colson, who was then and there the cashier of said association, of a certain writing and check, commonly known and called a cashier's check, bearing date the twenty-second day of January, in the year of our Lord one thousand eight hundred and ninety, which said check did then and there authorize and direct the said association to pay to the order of the said James A. Simmons the sum of sixty thousand dollars, although, as he, the said Peter J. Claassen, then and there well knew, the said sum of sixty thousand dollars was not then and there on deposit with the said association to the credit of him, the said James A. Simmons, and was not then and there due and owing from the said association to him, the said James A. Simmons, and the repayment thereof to the said association was not then and there in any way secured, and the said James A. Simmons had no manner of right and title to the same, and he, the said Peter J. Claassen, then and there unlawfully devising and intending that he, the said James A. Simmons, should appropriate and convert to his own use the said sum of sixty thousand dollars from and out of the moneys and funds of the said association, which said sum of money was, upon and pursuant to the direction and authorization contained in the said check, thereafter, to wit, on the twenty-third day of January, in the year of our Lord one thousand eight hundred and ninety, paid by the said association from and out of the moneys and funds of the said association to the said James A. Simmons, and was then and there appropriated and converted to the use of the said James A. Simmons, against the peace of the United States and their dignity and contrary to the form of the statute of the said United States in such case made and provided.

82

Twenty-first Count.

And the jurors aforesaid on their oath aforesaid do further present that Peter J. Claassen, late of the city and county of New York, in the district and circuit aforesaid, yeoman, heretofore, to wit, on the twenty-second day of January, in the year of our Lord one thousand eight hundred and ninety, at the southern district of New York and within the jurisdiction of this court, being then and there the president of a certain national banking association then and there known and designated as the Sixth National Bank of the City of New York, which said association had been theretofore created and organized under and by virtue of an act of Congress entitled "An act to provide a national currency secured by a pledge of United States bonds and to provide for the circulation and redemption thereof," approved June third, in the year of our Lord one thousand eight hundred and sixty-four, and which said association was then and there acting and carrying on a banking business at the city of New York, in the said district, under the said act of Congress and

acts amendatory thereof, did, wilfully and unlawfully and with intent to injury and defraud the said association, misapply and convert to the use, benefit, and advantage of a certain copartner-
83 ship composed of William M. Kilduff and Charles E. Wallack, then and there carrying on business under the name and style of Pell, Walleck and Company, certain moneys and funds then and there being the property of the said association, to wit, the sum of sixty thousand dollars, in the manner and by the means following—that is to say, he, the said Peter J. Claassen, being then and there such president as aforesaid, did, without the knowledge and consent of said association or its board of directors, procure the making by one Andrew E. Colson, who was then and there the cashier of said association, of a certain writing and check, commonly known and called a cashier's check, bearing date the twenty-second day of January, in the year of our Lord one thousand eight hundred and ninety, which said check did then and there authorize and direct the said association to pay to the order of the said copartnership the sum of sixty thousand dollars, although, as he, the said Peter J. Claassen, then and there well knew, the said sum of sixty thousand dollars was not then and there on deposit with the said association to the credit of the said copartnership and was not then and there due and owing from said association to the said copartnership, and the repayment thereof to the said association was not then and there in any way secured, and the said copartnership had no manner of right and title to the same, and he, the said Peter J. Claassen, then and there unlawfully devising and intending that the said copartnership should appropriate and convert to its own use the said sum of sixty thousand dollars from and out of the moneys and funds of the said association, which said sum of money was, upon and pursuant to the direction and authorization contained in said check, thereafter, to wit, on the twenty-third day of January, in the year of our Lord one thousand eight hundred and ninety, paid by the said association from and out of the moneys and funds of the said association to the said copartnership, and was then and there
84 appropriated and converted to the use of the said copartnership, against the peace of the United States and their dignity and contrary to the form of the statute of the said United States in such case made and provided.

Twenty-third Count.

And the jurors aforesaid on their oath aforesaid do further present that Peter J. Claassen, late of the city and county of New York, in the district and circuit aforesaid, yeoman, heretofore, to wit, on the twenty-second day of January, in the year of our Lord one thousand eight hundred and ninety, at the southern district of New York and within the jurisdiction of this court, being then and there the president of a certain national banking association then and there known and designated as the Sixth National Bank of the City of New York, which said association had been theretofore created and organized under and by virtue of an act of Con-

gress entitled "An act to provide a national currency secured by a pledge of United States bonds and to provide for the circulation and redemption thereof," approved June third, in the year of our Lord one thousand eight hundred and sixty-four, and which said association was then and there acting and carrying on a banking business at the city of New York, in the said district, under the said act of Congress and acts amendatory thereof, did, wilfully and unlawfully and with intent to injure and defraud the said association, misapply and convert to the use, benefit, and advantage of a certain copartnership composed of John Satterlee and James A. Simmons, then and there carrying on business under the name and style of John Satterlee and Company, certain moneys and funds then and there being the property of said association, to wit, the sum of sixty thousand dollars, in the manner and by the means following—that is to say, he, the said Peter J. Claassen, being
85 then and there such president as aforesaid, did, without the knowledge and consent of said association or its board of directors, procure the making by one Andrew E. Colson, who was then and there the cashier of said association, of a certain writing and check, commonly known and called a cashier's check, bearing date the twenty-second day of January, in the year of our Lord one thousand eight hundred and ninety, which said check did then and there authorize and direct the said association to pay to the order of the said copartnership the sum of sixty thousand dollars, although, as he, the said Peter J. Claassen, then and there well knew, the said sum of sixty thousand dollars was not then and there on deposit with the said association to the credit of said copartnership and was not then and there due and owing from said association to the said copartnership, and the repayment thereof to the said association was not then and there in any way secured, and the said copartnership had no manner of right and title to the same, and he, the — Peter J. Claassen, then and there unlawfully devising and intending that the said copartnership should appropriate and convert to its own use the said sum of sixty thousand dollars from and out of the moneys and funds of the said association, which said sum of money was, upon and pursuant to the direction and authorization contained in said check, thereafter, to wit, on the twenty-third day of January, in the year of our Lord one thousand eight hundred and ninety, paid by the said association from and out of the moneys and funds of the said association to the said copartnership, and was then and there appropriated and converted to the use of the said copartnership, against the peace of the United States and their dignity and contrary to the form of the — said United States in such — made and provided.

Twenty-fifth Count.

86 And the jurors aforesaid on their oath aforesaid do further present that Peter J. Claassen, late of the city and county of New York, in the district and circuit aforesaid, yeoman, heretofore, to wit, on the twenty-fourth day of January, in the year of our Lord

one thousand eight hundred and ninety, at the southern district of New York and within the jurisdiction of this court, being then and there the president of a certain national banking association then and there known and designated as the Sixth National Bank of the City of New York, which said association had been theretofore created and organized under and by virtue of an act of Congress entitled "An act to provide a national currency secured by a pledge of United States bonds and to provide for the circulation and redemption thereof," approved June third, in the year of our Lord one thousand eight hundred and sixty-four, and which said association was then and there acting and carrying on a banking business at the city of New York, in the said district, under the said act of Congress and acts amendatory thereof, did, wilfully and unlawfully and with intent to injure and defraud the said association, misapply and convert to the use, benefit, and advantage of a certain banking corporation then and there known and designated as the Lenox Hill bank, which said banking corporation had been theretofore created and organized under and by virtue of the laws of the State of New York and was then and there acting and carrying on a banking business at the city of New York, in the said district, certain moneys and funds then and there being the property of the said Sixth National Bank of the City of New York, to wit, the sum of two hundred and seven thousand eight hundred dollars, in the manner and by the means following—that is to say, "that he, the said Peter J. Claassen, as such president as aforesaid, did, without the knowledge and consent of the said Sixth National Bank of the City of New York and without the knowledge and consent
87 of the board of directors thereof, then and there cause to be paid at the New York Clearing House Association, to and upon divers checks and written orders for the payment of money made and drawn upon the said Lenox Hill bank by divers persons to the jurors aforesaid as yet unknown, and then and there presented for payment at the said New York Clearing House Association by divers banking corporations, then and there being members of the said New York Clearing House Association, a more particular description of which said divers banking corporations is to the jurors aforesaid as yet unknown, the said sum of two hundred and seven thousand eight hundred dollars, he, the said Peter J. Claassen, then and there well knowing that the said Sixth National Bank of the City of New York was then and there the clearing-house agent of the Lenox Hill bank at the said New York Clearing House Association, which said sum so paid as aforesaid, as he, the said Peter J. Claassen, then and there well knew, was in excess of all sums and amounts which the said Lenox Hill bank was then and there entitled to have paid out of the moneys and funds of the said Sixth National Bank of the City of New York, he, the said Peter J. Claassen, then and there unlawfully, wickedly, and fraudulently devising and intending that the said sum of two hundred and seven thousand eight hundred dollars should be and the same then and there was appropriated and converted to the use, benefit, and advantage of the said Lenox Hill bank, although, as he, the said Peter

J. Claassen, then and there well knew, the said sum of two hundred and seven thousand eight hundred dollars so paid as aforesaid had not been deposited and was not then on deposit with the said Sixth National Bank of the City of New York by the said Lenox Hill bank and was not then and there due and owing, from the said Sixth National Bank of the City of New York to the said Lenox Hill bank, and the repayment thereof to the said Sixth National
88 Bank of the City of New York was not then and there in any way secured, and the said Lenox Hill bank had no manner of right or title to the same, against the peace of the United States and their dignity and contrary to the form of the statute of the said United States in such case made and provided.

In the course of the trial ANDREW E. COLSON, a witness called by the prosecution, among other things testified as follows:

On the 22d of January, 1890, I was cashier of the Sixth National Bank of New York. It was my duty to attend the meetings of the board of directors as secretary, and as such I attended a meeting on the 22d of January. Charles H. Leland, J. G. Doubleday, and C. Frothingham were present. The resignation as director of William J. Quinlin was offered. On motion of Mr. C. Frothingham, his resignation was accepted. On motion of Mr. J. G. Doubleday, Mr. P. J. Claassen was nominated and elected a director. Mr. Claassen took his seat as a director. The written resignation of Mr. C. F. Leland was offered. On motion of Mr. C. H. Leland, it was accepted. On motion of Mr. P. J. Claassen, Mr. D. M. Ripley was nominated and elected a director. Mr. Ripley came in and took his seat. Mr. C. Frothingham offered his resignation. On motion of Mr. C. H. Leland, it was accepted. P. J. Claassen nominated Mr. Kenneth Watson as director, and he was elected. Mr. J. G. Doubleday offered his resignation as director, and it was accepted. On motion of Mr. P. J. Claassen, Mr. H. T. Cutter was nominated and elected a director. I understand he was not present. Mr. C. H. Leland offered his resignation as director, and it was accepted. On motion of Mr. P. J. Claassen, Mr. James Jourdan was nominated and elected a director. On motion, the meeting adjourned.

89 About ten minutes afterward, on the same day, another meeting was held, at which I was present and of the proceedings at which I took a minute. Mr. P. J. Claassen, Mr. D. M. Ripley, Mr. J. Kenneth Watson were present. On motion of Mr. D. Ripley, Mr. P. J. Claassen was nominated and elected president. The meeting then adjourned.

The witness identified six certificates of stock of the Sixth National bank, bearing the signatures of C. H. Leland, president, and A. E. Colson, cashier, issued on the 22d of January, 1890, as follows: One to P. J. Claassen for ten shares; one to J. Kenneth Watson for ten shares; one to D. M. Ripley for ten shares; one to H. T. Cutter for ten shares; one to James Jourdan for ten shares; one to James A. Simmons for 985½ shares. The certificates were put in evidence. There were also put in evidence ten other certificates of stock, made out by the witness pursuant to instructions from Mr. Claassen, all

dated on the 25th of January, 1890, signed P. J. Claassen, president, and A. E. Colson, cashier, two of the certificates for one hundred shares each standing in the name of P. J. Claassen, the others all standing in the name of James A. Simmons, which certificates were issued in lieu of and upon the surrender of 985½ shares before mentioned.

By direction of P. J. Claassen, written notice was given to each of the banks in the clearing-house association that on and after the 23d day of January checks and drafts drawn on the Lenox Hill bank would be redeemed by the Sixth National bank.

The election of P. J. Claassen as president of the Sixth National bank was announced (by the cashier) to the other banks in the city of New York by a circular letter as follows:

90 P. J. Claassen, president. A. E. Colson, cashier.
G. W. Pancoast, assistant cashier.

SIXTH NATIONAL BANK,
NEW YORK, *January* 22, 1890.

At a meeting of the board of directors of this bank, held this day, Mr. Peter J. Claassen was elected president in place of Mr. Chas. H. Leland, resigned.

A. E. COLSON, *Cashier.*

Signature: P. J. CLAASSEN.

Claassen assumed to act and did act continuously as president of the bank from January 22d to January 29th, inclusive. On January 29th the bank was closed by Alonzo B. Hepburn, United States bank examiner.

CHARLES H. LELAND, a witness called for the prosecution, among other things testified as follows:

I was president of the Sixth National bank on the 22d of January, 1890, having been first elected on the 3d of December, 1883. On the 23d of January a meeting of directors was held. Each resigned successively, and as they resigned one by one a new board were one by one elected. Immediately before the acceptance of our resignations, Mr. Frothingham, Mr. Doubleday, Mr. C. F. Leland, and myself transferred all the stock that we respectively owned. From that time to the 29th of January, 1890, neither of us owned any stock of the bank.

On the 23d of January I met Mr. Claassen at the deposit
91 vault of the Park bank. Frederick A. Smith and John G. Doubleday were present. We went down together from the main room to the vaults, and I conducted them to one of the small rooms which are provided for the convenience of box-holders. I then went to the strong box belonging to the Sixth National bank, in the inner safe of the Park bank vault, opened it and took out two of the tin boxes which contained a portion of the bonds of the bank. I then locked up the safe and went into the room where I had left these gentlemen, and there the bonds were taken out from

the package and counted in the presence of Mr. Claassen separately, one by one; and as a package was counted and found correct in accordance with the list which had been furnished me by the keeper of the general ledger in the bank and the assistant cashier, it was checked off by Mr. Claassen, Mr. Claassen checking as I counted. The same course was pursued with the other two boxes until the bonds were all counted over and found to be correct. Then Mr. Claassen signed the list, as having received those bonds, receipted for them. At the same time I delivered to Mr. Claassen and he received one of the keys, the president's key, to the strong box containing the bonds.

The list was identified by the witness and offered in evidence.

The defendant objected on the ground that it has not been made to appear that Peter J. Claassen was elected president of the bank by any competent board of directors qualified as the law requires, and that any transactions as an individual not designated or elected an agent or officer of the bank are not within the jurisdiction of this court.

The objection was overruled and the defendant excepted. The list was received and includes, among others, the bonds described in the first count of the indictment. The receipt is as follows:

"N. Y., *Jan'y* 23, '90.

Rec'd the above-enumerated bonds and stock for the Sixth National bank.

P. J. CLAASSEN, *Pres't.*"

92 Evidence was then given by the prosecution that the defendant, within half an hour after the election of the new board of directors and his election as president, directed the cashier to draw three checks for $60,000 each, one to the order of James A. Simmons, one to the order of Pell, Wallack & Company, and one to the order of John Satterlee & Company. No collaterals were furnished for these checks until the 27th of January. The checks were all given for the benefit of Simmons and were used to pay other checks which had been given Leland in part payment for the stock that Simmons had purchased of Leland.

On the 23d of January the defendant, acting as president, took from the Park bank vaults two hundred and sixty bonds, the property of the Sixth National bank, and delivered them to Pell, and on the 24th he took three hundred and sixty-two more bonds and delivered them to Pell, receiving a receipt therefor as follows:

"Received, New York, January 23, 1890, of the Sixth National bank, New York, the following-named bonds to be sold for account of said bank and accounted for to its president as he may demand," specifying the bonds and signed Pell, Wallack & Co.

The defendant did this at the request of Simmons, and he knew Pell was the financial agent of Simmons. These bonds were all sold or used as collateral by Pell, and the money obtained was used to pay checks which had been given Leland in payment for the stock that Simmons purchased of Leland. The jury under the

charge of the court found that the giving of the sixty-thousand-dollar checks, and the giving of the bonds to Pell, and the use made of the checks, and the money realized on the bonds, was with the knowledge of the defendant and the result of an arrangement between Claassen, Simmons, and Pell.

It was admitted upon the record that the oath prescribed
93 by section 5147, U. S. Revised Statutes, was not taken by either Claassen, Ripley, Watson, Cutter, or Jourdan prior to January 30, 1890.

Counsel for defendant requested the court to instruct the jury as follows:

I.

The persons elected as directors of the Sixth National bank on the 22d day of January, 1890, had no power to elect a president or constitute an agent of the bank until they had taken the oath prescribed by statute.

II.

The election of the defendant as president of the Sixth National bank not having been made by a legally qualified board of directors was of no effect, and the defendant was not thereby president of the bank and liable to the provisions of section 5209, R. S.

III.

The defendant not having qualified as a director of the Sixth National bank on the 22d day of January, 1890, was not eligible as president of the bank.

The court refused so to instruct; to which refusal the defence excepted.

Settled as above by consent, & argument to be had at October term.

July 9, 1890.

CHAS. L. BENEDICT.

(Endorsed:) The United States *vs.* Claassen. Printed case as settled. U. S. circuit court. Filed Jul- 9, 1890. John A. Shields, clerk.

94 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, appointed exclusively for the trial and disposal of criminal business, held at the United States court-rooms, in the city of New York, on the 25th day of October, 1890.

Present: The Honorable William J. Wallace, circuit judge of the second judicial court; the Honorable Charles L. Benedict, the district judge for the eastern district of New York, and the Honorable Addison Brown, the district judge for the southern district of New York.

THE UNITED STATES OF AMERICA
against
PETER J. CLAASSEN.

The motion for a new trial and in arrest of judgment herein on behalf of the defendant coming on to be heard, and after hearing Benjamin B. Foster and Asa W. Tenney, Esqrs., counsel for the above-named defendant, in support of such motion, and Edward Mitchell, Esq., United States attorney, in opposition thereto—

It is ordered that said motion be, and the same hereby is, in all things denied.

ADDISON BROWN.

Endorsed: U. S. circuit court, southern district of New York. The United States *versus* Peter J. Claassen. Order denying motion for new trial and in arrest of judgment. Edward Mitchell, United States attorney, attorney for plaintiff. U. S. circuit court. Filed Dec. 24, 1890. John A. Shields, clerk.

95 TUESDAY, *April 1st*, 1890.

The court meets pursuant to adjournment and is opened by proclamation.

Present: Hon. Charles L. Benedict, judge.

The grand jury come into court and, being called, they severally answer to their names. They bring in the following bill of indictment:

THE UNITED STATES
vs.
PETER J. CLAASSEN.

On motion of the U. S. attorney, ordered arraignment.

The defendant, on being arraigned, pleads not guilty to the indictment, with leave to withdraw the same by Friday, April 11th, 1890, at 2 o'clock p. m.

Ordered that the court stand open from day to day during the sessions of the grand jury.

FRIDAY, *April 11th*, 1890.

The court meets pursuant to adjournment and is opened by proclamation.

Present: Hon. Charles L. Benedict, judge.

THE UNITED STATES
vs.
PETER J. CLAASSEN.

Further proceedings in the above cause postponed to Monday, 14th inst., at 10 o'clock a. m.

96 MONDAY, *April 14th*, 1890.

The court meets pursuant to adjournment and is opened by proclamation.

Present: Hon. Charles L. Benedict, judge.

THE UNITED STATES
vs.
PETER J. CLAASSEN.

The defendant, through his counsel, Benjamin B. Foster, pleads not guilty to the 31st, 32nd, 33rd, and 34th counts of the indictment against him and demurs to each of the other counts. (Argument of demurrer set down for Thursday, 17th inst., at 10 a. m.)

Ordered that court stand open from day to day during the sessions of the grand jury.

THURSDAY, *April 17th*, 1890.

The court meets pursuant to adjournment and is opened by proclamation.

Present: Hon. Charles L. Benedict, judge.

THE UNITED STATES
vs.
PETER J. CLAASSEN. } § 5209.

97 Argument on the demurrer filed by the defendant in the above cause coming on for hearing this day, Mr. Benjamin B. Foster, of counsel for defendant, is heard in support thereof; Mr. Daniel O'Connell, ass't U. S. attorney, opposed. C. A. V.

Ordered that court stand open from day to day during the sessions of the grand jury.

THURSDAY, *April 24th*, 1890.

The court meets pursuant to adjournment and is opened by proclamation.

Present: Hon. Charles L. Benedict, judge.

THE UNITED STATES
vs.
PETER J. CLAASSEN. } § 5209, U. S. Rev. Stat.

The demurrer in this case is overruled, and the defendant is ordered to plead to the indictment on Monday, the 28th of April instant, at ten o'clock a. m.

April 24, 1890.

(Signed) CHAS. L. BENEDICT.

Ordered that the court stand open from day to day during the sessions of the grand jury.

98 MONDAY, *April 28th*, 1890.

The court meets pursuant to adjournment and is opened by proclamation.

Present: Hon. Charles L. Benedict, judge.

THE UNITED STATES
vs.
PETER J. CLAASSEN.

On motion of the U. S. attorney, ordered arraignment.

The defendant, on being arraigned, pleads not guilty to each and every count in the indictment contained, and the trial of the cause is set down for Wednesday, May 7th, 1890.

Ordered that the court stand open from day to day during the sessions of the grand jury.

WEDNESDAY, *May 7th*, 1890.

The court meets pursuant to adjournment and is opened by proclamation.

Present: Hon. Charles L. Benedict, judge.

THE UNITED STATES
vs.
PETER J. CLAASSEN.

On motion of the United States attorney, ordered trial.

Ordered that court stand open from day to day during the sessions of the grand jury.

99 THURSDAY, *May 8th*, 1890.

The court meets pursuant to adjournment and is opened by proclamation.

Present: Hon. Charles L. Benedict, judge.

THE UNITED STATES
vs.
PETER J. CLAASSEN.

The above cause coming on for trial this day:

Jurors Sworn.

Richard Kimbel.	Theodore E. Tack.
George W. Raynor.	Louis Kahn.
Henry Wilson.	Teneyck W. Rouse.
Henry C. Fuller.	Ernest D. Kahn.
August Oppenheimer.	Charles Whittemore.
Julius Harris.	Julius Ablowich.

Mr. Abram J. Rose, assistant U. S. attorney, opens cause in behalf of prosecution.

Ordered that court stand open from day to day during the sessions of the grand jury.

100 FRIDAY, *May 9th*, 1890.

The court meets pursuant to adjournment and is opened by proclamation.

THE UNITED STATES
vs.
PETER J. CLAASSEN.

The above cause being still on trial, the jurors are called and severally answer to their names.

Mr. Abram J. Rose, assistant U. S. attorney, concludes his opening in behalf of the prosecution.

(*Evidence for Prosecution.*)

Documentary evidence offered. (See stenographer's notes)
Charles H. Leland sworn.
Doc. ev. offered. (See as above.)
Andrew E. Colson sworn.
Doc. ev. offered. (See as above.)
Alonzo B. Hepburn sworn.
Further trial adjourned to 12th inst. at 11 o'clock a. m.
Ordered that court stand open from day to day during the sessions of the grand jury.

101 MONDAY, *May 12th*, 1890.

The court meets pursuant to adjournment and is opened by proclamation.
Present: Hon. Charles L. Benedict, judge.

THE UNITED STATES
vs.
PETER J. CLAASSEN.

The above cause being still on trial, the jurors are called and severally answer to their names.

Evidence for Prosecution.

Alonzo B. Hepburn resumed.
Henry T. Cutter sworn.
Chester C. Munro "
Frederick Worth "
Philip L. Meyer "
Ordered that court stand open from day to day during the sessions of the grand jury.

TUESDAY, *May 13th*, 1890.

The court meets pursuant to adjournment and is opened by proclamation.
Present: Hon. Charles L. Benedict, judge.

THE UNITED STATES
vs.
PETER J. CLAASSEN.

The above cause being still on trial, the jurors are called and severally answer to their names.

102 (*Evidence for Prosecution Resumed.*)

John Satterlee sworn.
Philip L. Meyer resumed.

Charles D. Backus sworn.
Edward H. Myers "
Gardner Willard "
Henry B. Dorman "
Charles E. Wallack "

In the matter of the continuation of the present term of this court.

Ordered that the present term of this court be continued for the purpose of the trial of this cause of the United States *vs.* Peter J. Claassen, now in progress, and that the said term be continued until the trial of the said cause is finished.

(Signed) CHAS. L. BENEDICT.

May Term.

WEDNESDAY, *May 14th*, 1890.

The court meets pursuant to law and is opened by proclamation.
Present: Hon. Charles L. Benedict, judge.

THE UNITED STATES
vs.
PETER J. CLAASSEN.

103 The above cause being still on trial, the jurors are called and severally answer to their names.

(*Evidence for Prosecution Resumed.*)

Charles E. Wallack resumed.
George R. Sheldon sworn.
George W. Pancoast sworn.

(Adjourned to Thursday, May 15th, 1890, at 11 o'clock a. m.)

THURSDAY, *May 15th*, 1890.

The court meets pursuant to adjournment and is opened by proclamation.
Present: Hon. Charles L. Benedict, judge.

THE UNITED STATES
vs.
PETER J. CLAASSEN.

The above cause being still on trial, the jurors are called and severally answer to their names.

(*Evidence for Prosecution Resumed.*)

Isaac B. Newcombe sworn.
Charles H. Graff "
Randolph Rodman "
Arthur L. Meyer "
John K. Watson "

(Adjourned to Friday, May 16th, 1890, at 11 o'clock a. m.)

104 FRIDAY, *May 16th*, 1890.

The court meets pursuant to adjournment and is opened by proclamation.

Present: Hon. Charles L. Benedict, judge.

THE UNITED STATES
vs.
PETER J. CLAASSEN.

The above cause being still on trial, the jurors are called and severally answer to their names.

Evidence for Prosecution.

James S. Thurston sworn.
Robert B. Roosevelt "
William M. Kilduff "

(Adjourned to Monday, May 19th, 1890, at 11 o'clock a. m.)

105 MONDAY, *May 19th*, 1890.

The court meets pursuant to adjournment and is opened by proclamation.

Present: Hon. Charles L. Benedict, judge.

THE UNITED STATES
vs.
PETER J. CLAASSEN.

The above cause being still on trial, the jurors are called and severally answer to their names.

Evidence for Prosecution.

Gardner Willard recalled.
William M. Kilduff resumed.
David M. Ripley sworn.
Alvin Chadwick "
Octavius D. Baldwin "
William Arnoux "
George D. Mabon "

(Adjourned to Tuesday, May 20th, 1890, at 11 o'clock a. m.)

106 TUESDAY, *May 20th*, 1890.

The court meets pursuant to adjournment and is opened by proclamation.

Present: Hon. Charles L. Benedict, judge.

THE UNITED STATES
vs.
PETER J. CLAASSEN.

The above cause being still on trial, the jurors are called and severally answer to their names.

Evidence for Prosecution.

Samuel W. M. Bishop sworn.
Octavius D. Baldwin resumed.
Andrew E. Colson "
William A. Booth sworn.
Joseph F. Sweazy "
Edward H. Callanan "
Richard W. Swan "

(Adjourned to Wednesday, May 21st, 1890, at 11 o'clock a. m.)

107 WEDNESDAY, *May 21st*, 1890.

The court meets pursuant to adjournment and is opened by proclamation.

Present: Hon. Charles L. Benedict, judge.

THE UNITED STATES
vs.
PETER J. CLAASSEN.

The above cause being still on trial, the jurors are called and severally answer to their names.

Evidence for Prosecution.

Andrew E. Colson resumed.
Howard F. Beekman sworn.
Barkley Wyckoff "
Charles B. De Barril "

Mr. Asa W. Tenney, of counsel for defendant, moves the court to direct the jury to find a verdict of acquittal, and is heard in support of motion.

Mr. Abram J. Rose, assistant U. S. attorney, opposed.

Motion denied. Exception.

(See stenographer's notes.)

Mr. Benjamin B. Foster, of counsel for defendant, opens cause in behalf of defendant.

(Adjourned to Thursday, May 22nd, 1890, at 11 o'clock a. m.)

108 THURSDAY, *May 22nd*, 1890.

The court meets pursuant to adjournment and is opened by proclamation.

Present: Hon. Charles L. Benedict, judge.

THE UNITED STATES
vs.
PETER J. CLAASSEN.

The above cause being still on trial, the jurors are called and severally answer to their names.

Evidence for Defendant.

Charles Leland recalled.
Pierre F. McDonald sworn.
Charles B. De Barril recalled.
Simon J. Clark sworn.
Nathaniel S. Bailey sworn.
Peter J. Claassen "
Henry B. Dorman recalled.
Peter J. Claassen resumed.

(Adjourned to Friday, May 23rd, 1890, at 11 o'clock a. m.)

109 FRIDAY, *May 23rd*, 1890.

The court meets pursuant to adjournment and is opened by proclamation.

Present: Hon. Charles L. Benedict, judge.

THE UNITED STATES
vs.
PETER J. CLAASSEN.

The above cause being still on trial, the jurors are called and severally answer to their names.

Evidence for Defendant.

Peter J. Claassen resumed.

(Adjourned to Monday, May 26th, 1890, at 11 o'clock a. m.)

110 MONDAY, *May 26th*, 1890.

The court meets pursuant to adjournment and is opened by proclamation.

Present: Hon. Charles L. Benedict, judge.

THE UNITED STATES
vs.
PETER J. CLAASSEN.

The above cause being still on trial, the jurors are called and severally answer to their names.

Evidence for Defendant.

Peter J. Claassen resumed.
John K. Watson recalled.
Charles W. Baldy sworn.

Rebuttal Evidence for Prosecution.

Andrew E. Colson recalled.
Henry Dimse sworn.
George S. Coe sworn.

Counsel for defendant move the court that prosecution be required to elect upon which counts of the indictment it will proceed to the jury. Motion granted.

The prosecution elects to go to the jury upon the 19th 21st, 23rd, 25th, 43rd, 1st, 9th, 11th, 29th, 31st, and 33rd counts of the indictment.

(Adjourned to Tuesday, May 27th, 1890, at 11 o'clock a. m.)

111 TUESDAY, *May 27th*, 1890.

The court meets pursuant to adjournment and is opened by proclamation.

Present: Hon. Charles L. Benedict, judge.

THE UNITED STATES
vs.
PETER J. CLAASSEN.

The above cause being still on trial, the jurors are called and severally answer to their names.

Mr. Asa W. Tenney, of counsel for defendant, sums up cause in behalf of defendant.

Mr. Edward Mitchell, United States attorney, commences his summing up of the cause in behalf of the prosecution.

(Adjourned to Wednesday, May 28th, 1890, at 11 o'clock a. m.)

112 WEDNESDAY, *May 28th*, 1890.

The court meets pursuant to adjournment and is opened by proclamation.

Present: Hon. Charles L. Benedict, judge.

THE UNITED STATES
vs.
PETER J. CLAASSEN.

The above cause being still on trial, the jurors are called and severally answer to their names.

Mr. Mitchell, U. S. attorney, concludes his summing up in behalf of the prosecution.

Charge is thereupon given by the court to the jury, who retire under charge of an officer duly qualified to attend them, and on their ruturn they say that they find the defendant guilty of the offenses charged in the 19th, 21st, 23rd, 1st, and 25th counts of the indictment, and they say that they find him not guilty as to the 43rd, 9th, 11th, 29th, 31st, and 33rd counts of the indictment, and so say they all.

And, on motion of defendant's counsel, being polled, they severally say that that is their verdict, and so say they all.

Ordered that the prisoner be remanded to the custody of the U. S. marshal.

113 Notice of motion for leave to make motion for new trial and in arrest of judgment given by counsel for defendant under the rule.

(Adjourned to Thursday, May 29th, 1890, at 11 o'clock a. m.)

FRIDAY, *October 24th*, 1890.

Before Hons. William J. Wallace, circuit judge, and Charles L. Benedict and Addison Brown, JJ.

THE UNITED STATES
vs.
PETER J. CLAASSEN.

Defendant moves to postpone the argument of the motion for new trial and in arrest of judgment and for leave to make and file a new case, with new exceptions.

Mr. John D. Townsend is heard in support of motions.

Mr. Edward Mitchell, United States attorney, opposed.

Motions denied by the court.

114 FRIDAY, *October 24th*, 1890.

The court meets pursuant to adjournment and is opened by proclamation.

The court in banc meets pursuant to rule.

Present: Hon. William J. Wallace, circuit judge; Hons. Charles L. Benedict and Addison Brown, JJ.

THE UNITED STATES
vs.
PETER J. CLAASSEN.

The above cause coming on for argument on motion for new trial—and in arrest of judgment.

Mr. Benjamin B. Foster is heard in behalf of defendant.

Mr. Edward Mitchell, U. S. attorney, is heard in opposition.

Mr. A. W. Tenney is heard in support of motion and in behalf of defendant.

C. a. v.

(Court adjourned to Monday, October 27th, 1890, at 11 o'clock a. m.)

115 WEDNESDAY, *March 18th*, 1891.

The court meets pursuant to adjournment and is opened by proclamation.

Present: Hon. Charles L. Benedict, judge.

THE UNITED STATES *vs.* PETER J. CLAASSEN. # 5209. Embezzling, Abstracting, and Misapplying the Funds of a National Bank and Making False Entry.

On motion of the United States attorney, ordered sentence.

The court thereupon proceeds to pass judgment and sentence the prisoner, Peter J. Claassen, to be imprisoned for the period of six (6) years; sentence to be executed at the Erie county penitentiary.

116 In the Supreme Court of the United States.

PETER J. CLAASSEN, Plaintiff in Error,
vs.
UNITED STATES OF AMERICA, Defendant in Error.

On the 21st day of March, in the year of our Lord one thousand eight hundred and ninety-one.

Afterward, to wit, on the 21st day of March, of this term, before the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, comes the said Peter J. Claassen, by Hector M. Hitchings, his attorney, and says that in the record and proceedings aforesaid there is manifest error, in this, to wit:

1. ALONZO B. HEPBURN, United States bank examiner, having closed the Sixth National bank on the evening of the 29th of January, 1890, was interrogated as follows:

Q. Did you have any instructions from the Comptroller of the Currency to close that bank?

A. No, sir.

Q. But you did not put this notice upon this bank by direction of the Comptroller of the Currency, did you?

A. Well, if you mean specific directions at that time, no. No, sir; I act under general orders and directions.

Q. Then you closed it upon your own judgment, did you?

A. Yes, sir.

(By Mr. TENNEY:)

117 Q. What are your duties as bank examiner?

Objected to as immaterial, incompetent, and irrelevant. Objection sustained and defendant excepts.

Q. Had the 6th National bank, to your knowledge, refused to redeem its circulating notes?

Objected to on the ground that it does not appear that it had any. Objection sustained. Exception.

The COURT: I rule generally that everything that happened after the bank closed is immaterial to this issue.

Counsel for defendant takes an exception.

Q. Do your duties as bank examiner include going up and down the town inquiring as to the responsibility of depositors?

Objected to as immaterial, irrelevant, and incompetent. Objection sustained and defendant excepts.

2. PHILIP L. MYER, having been called as a witness for the prosecution and having been examined, testified:

Q. When we were closing the examination yesterday I think we left you with Mr. Pell in Liberty street, Pell having bonds which he gave to you on the morning of the 23rd. Do you remember that?

A. Yes, sir.

Q. How many bonds did Mr. Pell give to you on the morning of the 23rd of January?

Objected to as immaterial, incompetent, and not connected with the defendant. Objection overruled. Exception.

118 A. 100.

Q. Did you receive another lot of bonds from Pell on that same day, later in the day?

Same objection, ruling, and exception.

A. I think so; yes, sir.

Q. How many?

Same objection, ruling, and exception.

A. 110 or 115; I don't exactly recollect which. I think it was 110.

Q. About what time of the day?

A. Half past 2.

Q. What did you do with the first lot of these bonds of 100 received about noon?

Same objection, ruling, and exception.

A. I took them to Theodore Myers & Co.

Q. Theodore W. Myers & Co.?

A. Yes, sir.

Q. What did you do with them there?

A. Got $100,000 that was advanced on them.

Q. You got $100,000 of moneys advanced?

A. Yes, sir.

By the COURT:

Q. Loans?

A. No, sir; not loans—advance.

Q. Advanced on the securities?

The COURT: They sold the securities?

The WITNESS: The securities were left for sale.

Q. You left the securities there for sale?

A. Yes, sir.

Q. And you obtained these advances?

A. Yes, sir.

Q. In anticipation of the subsequent sale by Myers?

Same objection, same ruling, and exception.

A. Yes, sir.

119 Witness testified that he received three checks which he identified. Counsel for plaintiff offers in evidence three checks made by Theodore W. Myers & Co.—one dated January 3, 1890, on the Continental National bank, to the order of S. T. Myers & Son, for $50,000; a second check, dated January 3, 1890, on the Continental National bank, to the order of P. L. Myer, for $33,000, and a third check, dated January 23, 1890, on the Continental National bank, to the order of P. L. Myer, for $17,000.

Objected to as immaterial and incompetent, and that the defendant is not connected with them. Objection overruled. Exception by defendant.

Q. What did you do with the bonds which you received from Pell at 2.30 in the afternoon of the 23rd?

The COURT: How many did you say that was?

The WITNESS: 110 or 115; I don't recollect which.

Q. What did you do with them?

A. Brought them to Sheldon & Co., William C. Sheldon & Co. There I got a check for advances, and left the bonds, with instructions to sell them. This paper is the check which I received (identifying it.)

Counsel for plaintiff offers in evidence the check, which reads as follows:

"NEW YORK, *January* 23, 1890.

Bank of North America, pay to the order of P. L. Myer one hundred and ten thousand dollars.

$110,000.00. WILLIAM C. SHELDON & CO."

Same objection, ruling, and exception.

120 On the 24th of January witness received 180 other bonds mentioned in a list in the hands of the district attorney. He thinks he received them in two lots—in the first lot 100.

Q. About what time of day?

A. Somewhere about noon, I should think.

In the second lot, 80, received about 2.30. Of the first lot witness took 50 of them to Theodore W. Myers & Co., and the second lot took 50 or gave his brother 50 to take to E. K. Willard & Co.; could not state positively whether it was 50 or 56 of the first lot. The second lot he took to Theodore W. Myers & Co.

Q. When you took the first lot of 50 to Theodore W. Myers & Co. did you receive anything from them—from the bonds or on the bonds?

A. Yes, sir.

Q. That check (handing witness paper)?

A. That is the check.

Q. You left the bonds to be sold?

A. Yes, sir.

Q. Was $50,000 advanced on them?

A. Yes, sir.

Counsel for plaintiff offers in evidence the check mentioned in last question to the witness.

Objected to on the grounds previously stated and on the additional ground that by the testimony already given it would be impossible for the proceeds of these checks to have gone towards the payment for the stock. Objection overruled. Exception.

The checks were then read in evidence.

Q. What did you do with this check after receiving it?

Same objection, ruling, and exception.

121 A. Got the money for it.

Q. Where?

A. At the Western National bank.

Q. What did you do with the money that you got from the Western National bank?

A. Gave it to Mr. Pell. Mr. Pell was not with me.

Q. With reference to the second lot received on the 24th, what did you do with these?

A. I gave that check to Mr. Pell.

Q. What did you do with the bonds first?

A. Took the bonds to Theodore Myers & Co.

Q. $80,000?

A. Yes, sir.

Q. And received this check from Theodore W. Myers & Co.?

A. Yes, sir.

Q. On delivering $80,000 of these same bonds that you have been referring to?

A. Yes, sir.

Counsel for plaintiff offers in evidence the check last referred to as follows:

"NEW YORK, *January* 24, 1890.

Continental National bank, pay to the order of P. L. Myer eighty thousand dollars.

$80,000.00. THEODORE W. MYERS & CO."

Same objection, ruling, and exception.

Q. What did you do with this check after receiving it?

A. Gave it to Mr. Pell.

Q. What was done with it after that?

A. He gave it to me back again.

Q. With any request?

A. To get him the money for it. I got for him from the Bank of North America a cashier's check for $80,000.

122 Q. Will you look at this paper and state whether that is the cashier's check which you refer to?

A. Yes, sir.

Counsel for plaintiff offers in evidence the paper last referred to, being cashier's check of the Bank of North America for $80,000.

Same objection, ruling, and exception.

Witness received a further check from Theodore W. Myers & Co. as advances on or proceeds of bonds left with them, which he identifies, dated January 29, on the Continental bank, to S. T. Myer & Son for $20,000.

Check offered in evidence.

Same objection, ruling, and exception.

On the 24th of January witness received $50,000 in cash from the Myers & Company check, $56,000 in cash from the Willard check, and $85,000 in cash of the proceeds of a loan to the Western National bank, amounting in all to $191,000 in bills.

(By the COURT:)

Q. All turned into bills at the request of Mr. Pell?

A. Yes, sir.

Q. What did you do with $191,000 in money?

Same objection, ruling, and exception.

A. I gave it to Mr. Pell, the whole of it.

Q. What did Pell do with it?

A. Gave me, I think, $75,000 or $76,000 in cash back.

Witness also indentifies another check of $10,000 which he received from some Coeur d'Alene bonds which were taken to Sheldon & Co.

Counsel for plaintiff offers in evidence the check above referred to.

123 Same objection, ruling, and exception.

Check admitted and read.

On cross-examination witness testifies:

Was first introduced to Gen. Claassen last summer, I think, by Mr. Simmons; has not associated with him on terms of intimacy since; never had any business transactions with him or any interviews with him on business matters except a conversation in which he told witness that a stock house on the street had a large amount of English capital which they were going to invest in American securities. Witness never received a check from Claassen in his life; never exchanged checks personally with him of any kind.

Q. In what way did these checks of Claassen get into your hands that you spoke of having?

A. Mr. Pell would borrow some money from me for Mr. Simmons, and the day following I would get perhaps a check of two or three thousand on the payment of the loan back. I would always take it.

Q. How long have you known Mr. Pell?

A. I could not say exactly. I think a couple of years.

Q. In the transactions with Mr. Pell did you understand or did he give you to understand that you were dealing with him directly or as the representative of some other person?

A. The representative of Mr. Simmons.

Q. In all your transactions did you recognize him as the representative of Mr. Simmons?

A. Yes, sir.

Q. Did you have any talk with Mr. Claassen between the
124 22d of January and the 29th of January, 1890?

A. No, sir; I had no interviews with him at all.

Q. In any of your dealings with Mr. Pell which you have testified to was Mr. Claassen's name mentioned to you by him as interested in them at all?

A. I do not recollect of its ever having been mentioned.

Q. When did you first know Mr. Simmons proposed to purchase the controlling interest in the 6th National bank?

A. A couple of days before it transpired—about the 20th.

Witness overheard a conversation in Mr. Pell's office between Mr. Pell and Mr. Simmons. Another party was there whom he did not know; did not see Mr. Claassen there; does not think he heard his name mentioned as among the prospective purchasers of the bank.

Witness then identifies each one of the checks offered in evidence by the prosecution, as set out above, and says in regard to each one, separately and specifically, that while it was in his possession or before it came into his possession he had no interview at all with Mr. Claassen concerning it. Mr. Claassen never saw it in his possession, and never saw it prior to its going into his possession.

Q. Was any of the money which you received, which you have testified to, or any of the proceeds of these checks paid to Mr. Claassen by you?

A. No, sir.

Q. Did you have any connection, remote or direct, with Mr. Claassen in this whole series of transactions in regard to these bonds that you have testified to?

A. No, sir.

Q. Did you not see him with regard to it?

A. No, sir.

125 Q. Or talk with him in regard to it?

A. No, sir.

Q. Nor did he know, so far as you know, what you and Pell were doing?

A. No, sir.

The prosecution was allowed to trace through numerous witnesses, no one of whom had any personal connection with Peter J. Claassen or transaction with him respecting the same, what became of 622 bonds, of the par value of $1,000 each, delivered by Claassen to Pell, for sale, on the 23d and 24th days of January, 1890, under the following objection, namely:

"It is agreed that all evidence as to any transactions in regard to these bonds subsequent to the giving of the receipt for them and their delivery to Pell, Wallack & Company for sale to be considered as taken under the objection on the part of the defendant without specifying the objection to each question."

3. CHARLES E. WALLACK, having been called as a witness by the

prosecution and having testified that he was the president of the Lenox Hill bank and of Pell, Wallack & Company, and it having been already proven that on the morning of the 22d day of January, 1890, there was left with the Third National bank, in the city of New York (for the purpose of procuring from it its two checks, namely, one to the order of Pell, Wallack & Co., for $150,000, and one to the order of James A. Simmons, for $150,000, which checks were delivered to Mr. Leland in payment of the stock), the following
126 certified checks on the Lenox Hill bank, namely, William M. Kilduff, $50,000; Pell, Wallack & Co., $50,000; J. K. Watson, $50,000; James A. Simmons, $50,000; but no testimony having yet been given as to knowledge on the part of Peter J. Claassen of the accounts of said parties with said Lenox Hill bank the following questions were asked:

"Q. Will you please say what, if any, instructions you gave your paying teller after he handed you these checks?

A. I told him to certify them.

Q. Was the account of William M. Kilduff with your bank, on January 22d, when you gave the order to certify, good for $50,000?

Objected to.

A. At that time of the morning?

Q. At that time.

Objected to as immaterial, incompetent, and not connected with the defendant. Objection overruled. Exception by defendant.

A. At that time in the morning, no.

Q. Was the account of Pell, Wallack & Co. at your bank at the time you gave this order to certify good for $50,000?

Same objection, ruling, and exception.

A. No, sir.

Q. Was the account of J. K. Watson with your bank good for $50,000 at the time you gave that order?

Same objection, ruling, and exception.

Q. Do you recognize those checks as the ones which were directed by you to be certified (handing witness checks)?

A. I do.

127 Counsel for plaintiff offers in evidence the checks above referred to.

Same objection.

Q. J. K. Watson had an account at your bank?

A. He did.

Q. And Pell, Wallack & Co. had an account there?

A. Yes, sir.

Q. And William M. Kilduff?

A. And William M. Kilduff; yes, sir.

The objection to the admission of the checks is overruled, and

counsel for defendant excepts. The three checks are marked in evidence.

On cross-examination of this witness, witness testified that he never had any business transactions with Mr. Claassen; he never saw him at the Lenox Hill bank; he never notified him prior to the 24th day of January that Mr. George H. Pell was not a member of his firm. In the transactions which he has testified to as to the checks he had no transaction or communication with Mr. Claassen. Mr. Pell was at one time a member of his firm about three years before and had been prior to that time for some 12 years, and his name still remained upon the signs of their place of business, which was Pell, Wallack & Co.

4. CHARLES E. WALLACK, the president of the Lenox Hill bank and who had been such for more than a year prior to the transactions in question, was asked:

Q. Do you know the value of the Lenox Hill bank stock on January 22, 1890?
A. I know about.
Q. What was it worth per share?

128 Objected to on the ground that it does not appear that the witness is qualified to testify on the subject.

Q. Was it quoted in the market?
A. No, sir; it was not at that time.
Q. Do you — its value by sales?
A. I only know what was offered for it.
Q. You know what it was offered for?
A. I know what was offered for it.
Q. Will you state what was offered for it on or about the 22nd.

Objected to on the ground that what was offered for a man's property is not the best evidence of value and, second, that the bank stock of the Lenox Hill bank was not received until the 27th of January.

The COURT: I think the best way to get at the value of it would be from the statement of the bank.

The objection is sustained. Exception.

Q. You have testified that Mr. James A. Simmons bought a certain number of shares—the controlling stock, 505 shares?
A. Yes, sir.
Q. Will you state, if you know, what Mr. Simmons paid per share?

Objected to on the ground that the transaction referred to took place on the 19th of December, and is therefore too remote. Objection sustained. Exception by defendant.

Q. Do you know of any sales of stock of this bank on or
129 about the 22d of January or in the month of January.
A. I do not.

5. WILLIAM M. KILDUFF, a member of the firm of Pell, Wallack & Co., having testified to the signing of checks with the name of the payee blank, identifies a check of $15,000 made to the order of Peter J. Claassen, and testified that the payee's name was in the handwriting of Pell, and says that it was not made at Claassen's request but at Pell's.

Q. You did not owe Claassen anything?
A. We didn't owe him anything and he didn't owe us anything.
Q. At whose request did you do this?
A. At Pell's.

Mr. TENNEY: I understand that this evidence is all taken subject to the objection that I made.

The COURT: Yes; I admitted it on the ground that, as the evidence stands, the question will be submitted to the jury whether or not there was a combination, an agreement between Mr. Claassen and Mr. Pell and Mr. Simmons that the moneys of this bank—the proceeds of those 622 bonds—should be applied to paying Leland; and if the jury are satisfied that there was a combination or agreement of that kind, then, of course, this is all material.

Mr. TENNEY: The point I make is that it was in the absence of Mr. Claassen and the further point that he is on trial here individually and not as a conspirator.

The COURT: Of course; still the rules would be the same. If the jury finds that he conspired with Pell and Simmons to take the money of this bank to pay the debt of Simmons to Leland
130 by a check, then this is material, in my opinion, notwithstanding the fact that he is not indicted under the conspiracy statute, but is indicted for allowing the money to go that way.

Mr. TENNEY: I have not filed objections constantly, but there is an understanding that whatever evidence is given here in the absence of Mr. Claassen I am to have the benefit of an objection at the time.

The COURT: You have had a general statement and I give you now the grounds, and you see the grounds yourself, of course.

Exception.

6. Mr. COLSON, the cashier of the 6th National bank, having testified in regard to the making of the three collateral notes of $60,000 each on the 27th day of January, and the attaching of the securities thereto, namely, Equitable bank stock and Lenox Hill bank stock, was asked these questions:

Q. Do you know yourself what the standing of the Lenox Hill bank was on January 22, 1890?
A. I do not.
Q. Nor the Equitable?
A. Nor the Equitable.
Q. Nor the value of the stock?
A. I do not. I have not the slightest idea.
Q. Do you know anything to the detriment of either bank at that time?

A. No; not specially.
Q. They were banks doing business in this city; you know that?
A. Yes, sir.
Q. You knew nothing to their discredit?
A. I knew nothing to their discredit; no, sir.
Q. Have the three $60,000 notes been paid?

131 Objected to as immaterial. Objection sustained. Exception.

Q. Do you know where the collaterals are that were attached to those three $60,000 notes?
A. I do not.
Q. Do you know what became of them?
A. I do not know what became of them.
Q. You do not know whether they are in the bank yet or not, do you?

Objected to. Objection sustained. Exception.

7. At the close of the evidence for the prosecution, there being 46 counts to the indictment, counsel for defendant moves that the plaintiff be directed to elect which of the counts they choose to rely upon.

The court states that the motion will be granted if made when the testimony is closed, but will not be granted at this stage of the case.

Exception.

8. At the close of the evidence for the prosecution counsel for defendant moves to strike out all the evidence relating to the three loans of $60,000 each, made on the 22d day of January, 1890, on the ground that the collaterals given or pledged with those loans or for those loans have not been produced in court.

Motion denied. Exception noted by defendant.

9. Counsel for defendant moves that the court direct an acquittal.

Motion denied. Exception by defendant.

132 10. To the following words in the charge of the judge, namely:

"Here I should say that it is not a question of restitution after the doing of the act, but of the act done by the accused on the 22nd. On the 27th—the money having passed out of the bank on the 22—notes were given and collateral was given, as it would seem, but it cannot be said that because the bank subsequently availed itself of those collaterals therefore there was no misapplication of the bank's money on the 22d. So the question is not whether the bank saved itself finally, but whether or not on the 22nd, when this defendant caused the $60,000 cashier's check to be given to Simmons, he applied the money of the bank to the use of Simmons. Restitution afterward or the fact that the bank got collaterals afterward does

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DEC 1 1891

Supreme Court of the United States.

PETER J. CLAASSEN,

Plaintiff in Error,

vs.

THE UNITED STATES.

BRIEF FOR PLAINTIFF IN ERROR.

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LIVINGSTON MIDDLEDITCH & Co., Printers, 149 to 153 Leonard Street, New York.

Supreme Court of the United States.

PETER J. CLAASSEN,
Plaintiff in Error,
vs.
THE UNITED STATES OF AMERICA.

October Term, 1891.
Term No. 1191.

In Error to the Circuit Court of the United States for the Southern District of New York to review a Judgment of Conviction and sentence of the plaintiff passed on the 18th day of March, A. D. 1891.

Brief for Plaintiff in Error.

The plaintiff was indicted under Section 5209 of the Revised Statutes of the United States, the indictment containing forty-four counts. [pp. 1-58.]

A demurrer to each count except 31, 32, 33 and 34 upon the ground "that the errors therein stated, in manner and "form as the same are therein stated and set forth, are not sufficient in law and that he is not bound by the law of the land "to answer the same," was interposed and the plea "not guilty" was interposed, to 31, 32, 33 and 34. [pp. 59 and 72.]

The demurrer was overruled and plaintiff ordered to plead and pleaded "not guilty" to each and every count of the indictment [p. 74.]

At the close of the entire evidence, upon motion made, the prosecution elected to go to the jury on counts 19, 21, 23, 25, 43, 1, 9, 11, 29, 31 and 33. [p. 80.]

The jury found plaintiff guilty on counts 19, 21, 23, 1 and 25, and not guilty on the others. [p. 80.]

The trial was concluded May 29, 1890, and an order made July 5, 1890, postponing argument of motion for a new trial until October term, to enable counsel for plaintiff to join his family in Europe [p. 69]; defendant in meantime remaining in

jail, and the case on such motion was settled and filed July 9, 1880. [pp. 60-71]. A motion was made in October before the Court in Banc by other counsel to make a new case with new exceptions which was denied. [p. 81.]

The Court in Banc heard the motion for a new trial and in arrest of Judgment on October 24, 1890, and denied the same.

On March 18, 1891, plaintiff was sentenced to imprisonment for six years in the Erie County Penitentiary. [p. 81.]

The testimony on the trial, the rulings, exceptions and charge were all taken down by a stenographer and preserved. [p. 75, 78.]

For convenience of reference the five counts upon which plaintiff was convicted will be found together at pages 61 to 68 of the record.

A writ of error was sued out in this Court on March 21, 1891, under the Act of March 3, 1891. On March 21, 1891, there was filed in the Circuit Court Clerk's Office an assignment of errors which set forth specifically and at some length and after the form and manner of a bill of exceptions, certain testimony which was admitted or rejected at the trial under objection and exception. [pp. 82-92.]

To this Assignment of Error, four days later, the District Attorney filed a Joinder in Error pleading *in nullo est erratum and praying* this Court "to examine as well the record and "proceedings aforesaid *as the matters aforesaid above assigned "for error.*"

None of the forty-four counts of the indictment charge a conspiracy entered into between the plaintiff and others, but all are personal to the plaintiff himself.

Specification of Errors.

1. The specific demurrer to each of the five counts upon which plaintiff was convicted were improperly overruled for the following reasons:

As to the 19th, 21st, 23rd and 25th counts.

They fail to contain the following necessary averments:

A. That the parties to whom the money was paid were insolvent or unable to repay the same.

B. That the money was lost to the bank or even put in jeopardy.

C. That it was not all repaid.

D. That the fund was in any degree put in danger of being lost.

E. There is no averment that negatives or tends to negative the fact that the parting with this money was an accommo-

dation loan, based on the check or note or other obligation of the parties named, they being perfectly able and ready to pay the loan at any moment back.

F. That defendant was not "lawfully authorized" to transact the business of the Bank and make this loan as provided by Paragraph 7, Section 5136, Revised Statues of the U. S.

G. It does not state *acts* which make out a criminal misapplication

As to Count I.

It fails to set out specifically what *acts* defendant was guilty of which went to make out the embezzlement or conversion, or that the offence was more than a mere technical conversion, or the Bank thereby lost and failed to recover the property named, or that the bonds were not taken and placed for sale by defendant for the benefit of the Bank and the proceeds accounted for or that the Bank was damaged or injured or lost one dollar by the transaction.

2. The following rulings of the Court upon the trial were erroneous. (R., p. 82.) "I rule generally that everything that happened *after* the bank closed is immaterial to this issue" —Counsel for defendant takes "an exception"— in connection with the 6th. assignment of error. [P. 90] as follows:

Mr. Colson having testified to the making of three collateral notes of $60,000 each on the 27th day of January, 1890, by the parties to whom defendant was charged with paying those moneys and to the attaching of the securities thereto, viz: Equitable Bank Stock and Lenox Hill Bank Stock, further testified that he did not know the standing of either of those banks on January 22d nor the value of their stock; *they were banks doing business in the city and he knew nothing to their discredit;* was asked:

"Q. Have the three $60,000 notes been paid?

Objected to as immaterial. Objection sustained. Exception."

Having testified again that he did not know where the collaterals were or what had become of them, he was asked:

"Q. You do not know whether they are in the bank or not?

Objected to. Objection sustained. Exception."

The Sixth National Bank was closed on the evening of January 29, 1890 [fol. 116, p. 82], the above collateral being given before any suspicion of trouble (R., fol. 132).

3. The admission of the evidence of Philip L. Meyer and of numerous other witnesses, no one of whom had any personal connection with the defendant or saw, conversed with or knew him at all in the various transactions testified to, as to what became of the 622 bonds which defendant was indicted for embezzling under Count 1 of the indictment and which he delivered to Pell, Wallack & Co., for sale and took their receipt for on January 23d and 24th, 1890, the entire testimony being taken under the objection and exception that it was not in any way connected with the defendant, was erroneous. [See this testimony R., pp. 83–87.]

The reason stated for the admission of the testimony was, that though *not* indicted as a conspirator with Pell and Simmons to take the money of the bank, yet the rules of evidence are the same as if he were. [R., p. 90, fol. 129, 130.]

4. James A. Simmons, John Satterlee & Co., and Pell, Wallack & Co., having given on the 27th of January, 1890, collateral security for the repayment of each of the loans of $60,000 made to them on January 22, 1890, and which collaterals consisted of Lenox Hill and Equitable Bank Stock as testified to by Colson [fol. 130], Charles E. Wallack, at that time the President of the Lenox Hill Bank was interrogated as to the value of Lenox Hill Bank Stock and was not permitted to testify on the ground that the statement of the Bank would be the best evidence.

See questions, rulings and exceptions, R., p. 89.

5. The refusal of the Court at the close of the case to compel the prosecution to elect on what counts of the indictment they chose to rely was erroneous.

See ruling and exception. R., p. 91.

6. The following part of the charge of the Judge was erroneous, viz. :

"Here I should say that it is not a question of restitution after the doing of the acts, but of the acts done by the accused on the 22d. On the 27th, the money having passed out of the Bank on the 22d, notes were given and collateral was given, as it would seem, but it cannot be said that because the

bank subsequently availed itself of those collaterals, therefore there was no misapplication of the bank's money on the 22d. So the question is not whether the bank saved itself finally, but whether or not on the 22d, when this defendant caused the $60,000 cashier's check to be given to Simmons, he applied the money of the bank to the use of Simmons. Restitution afterward, or the fact that the bank got collaterals afterward, does not affect the question of his criminality in doing the act done on the 22d."

Exception.

7. The following part of the Judge's charge was erroneous, viz. : " I must remark further to you that Simmons is not called to corroborate him as to these dealings and sayings between him and Simmons, nor is his absence accounted for, and it is a rule that where a man fails to put a witness on the stand who is at hand and can be produced, it is a fair presumption that if produced he would not corroborate him. That rule should be noticed here because to a large degree the statement of the defendant is of transactions and sayings between him and Simmons, and Simmons, if on the stand, would say, 'I said so and so,' as he says, or, 'I did not say so and so,' as he says, but Simmons is not called."

Exception.

8. The refusal of the Trial Justice to charge the following request, was erroneous, viz. : " I ask your honor to instruct the jury that they must find that the defendant knew that Simmons intended to use the funds to meet the checks given to Leland before they can convict him on the point charged."

The Court : I have charged on that subject. I do not care to repeat.

Exception.

POINTS.

I.

The counts of the indictment upon which plaintiff in error was convicted, are insufficient; do not charge a crime and the demurrers interposed to the same were improperly overruled.

The indictment is presented under Section 5209 of the revised Statutes which is in the following words :

> "Every president, director, cashier, teller, clerk, or agent of any association, who embezzles, abstracts, or wilfully misapplies any of the moneys, funds, or credits of the association ; or who, without authority from the directors, issues or puts in circulation any of the notes of the association ; or who, without authority, issues or puts forth any certificate of deposit, draws any order or bill of exchange, makes any acceptance, assigns any note, bond, draft, bill of exchange mortgage, judgment, or decree ; or who makes any false entry in any book, report, or statement of the association, with intent, in either case, to injure or defraud the association, or any other company, body politic or corporate, or any individual person, or to deceive any officer of the association, or any agent appointed to examine the affairs of such association ; and every person who, with like intent, aids or abets any such officer, clerk, or agent in any violation of this Section, shall be deemed guilty of a misdemeanor, and shall be imprisoned not less than five years nor more than ten."

The 19th, 21st, 23rd and 25th counts are alike in failing to aver that the "misapplication" charged was "without authority of the Board of Directors," and are also alike in the crime charged. The only difference in the charges of said counts are as follows :

19th. The defendant "did wilfully, unlawfully and with "intent to injure and defraud the said association, misapply "and convert to the use, benefit and advantage of one James "A. Simmons, certain moneys, &c." (Fol. 81.)

21st. The defendant "did, wilfully and unlawfully, and "with intent to injure and defraud the said association, misap- "ply and convert to the use, benefit and advantage of a cer- "tain co-partnership composed of WILLIAM M. KILDUFF and "CHARLES E. WALLACK, then and there carrying on business "under the name and style of Pell, Wallack & Co., certain "moneys, &c. (R., fol. 83.)

23d. The defendant "did, wilfully and unlawfully, and with "intent to injure and defraud the said association, misapply "and convert to the use, benefit, and advantage of a certain "co-partnership, composed of JOHN SATTERLEE and JAMES A. "SIMMONS, then and there carrying on business under the name "and style of John Satterlee & Co., certain moneys," &c. (R., fol. 84.)

25th. The defendant "did, wilfully and unlawfully, and "with intent to injure and defraud the said association, misap- "ply and convert to the use, benefit and advantage of a cer- "tain banking corporation, then and there known and desig- "nated as the LENOX HILL BANK, certain moneys, &c." (R., fol. 86.)

In each of these counts, therefore, the controlling words, charging the gist of the offense, are "*that the defendant did, "wilfully and unlawfully, and with intent to injure and de- "fraud the said association, misapply and convert to the use, "benefit and advantage*" of the various parties named in the "respective counts certain moneys and funds," the property of the Sixth National Bank.

The first count differs from the others. The words descriptive of the offence in that count are that the defendant "*did, by virtue of his said office and employment*" (as President of the Bank, previously averred) "*and while he was so employed and "acting as such president, as aforesaid, receive and take into his "possession certain funds and credits, to wit.*" (fol. 77.) It then sets forth, by description, certain bonds, and, at the end of such description, proceeds in these words:

> "*Then and there being the property of said association, and which he held for and in the name and on account of the said association, and did then and there wilfully and unlawfully, and with intent to injure and defraud the said association, embezzle the said bonds and written obligations, and convert them to his own use against the peace,*" &c. (R., fol. 80.)

We shall first consider the sufficiency of the 19th, 21st, 23d and 25th counts.

The acts named in § 5209 which are made, each respectively, to constitute a crime are :

(1) Embezzling the bank's property.
(2) Abstracting it.
(3) Wilfully misapplying it.
(4) Issuing or putting in circulation its notes.
(5) Issuing or putting forth certificates of deposit, or an order or bill of exchange.
(6) Making an acceptance ;
(7) Assigning a note, bond, draft, bill of exchange, mortgage, or judgment—these " with intent, in either case, to injure or defraud the association, or to deceive a bank examiner.
(8) Aiding or abetting in doing either of these.

Neither of the *four* counts named contains any averment which brings, or tends to bring, the defendant within any other of the eight classes just named than the 3d.

In other words, there is nothing in either of these counts which charges, or tends to charge, the defendant with any other act or offence than " wilful misapplication " of the property named.

Let us examine now one of the counts upon which there was a conviction, to wit, the 19th count, found on pages 30 and 31 of the record, and which, leaving out all formal words and parts not necessary for testing its sufficiency under Section 5209, reads as follows :

" And the jurors aforesaid * * * do further present that Peter J. Claassen * * * at the Southern District of New York, and within the jurisdiction of this Court, being then and there President of a certain national banking association * * * and which association was then and there acting and carrying on a banking business * * * did, wilfully and unlawfully, and with intent to injure and defraud the said association, misapply, and convert to the use, benefit and advantage of one James A. Simmons, certain moneys and funds then and there being the property of said association, to wit, the sum of sixty thousand dollars, in manner and by means following, that is to say ; he, the said Peter J. Claassen; being then and there president, as aforesaid, did, without the knowledge and consent of said association, or its Board of Directors, procure the making, by one Andrew E. Colson, who was then and there the cashier of said bank, of a certain writing and check, commonly known and called a cashier's check, bearing date the twenty-second day of January, in the year of our Lord, one thousand, eight hundred and ninety, which said check did then and there authorize and

direct the said association to pay to the order of the said James A. Simmons, the sum of sixty thousand dollars, although, as he, the said Peter J. Claassen, then and there well knew, the said sum of sixty thousand dollars was not then and there on deposit with the said association to the credit of him, the said James A. Simmons, and was not then and there due and owing from the said association to him, the said James A. Simmons, and the repayment thereof to the said association was not then and there in any way secured, and the said James A. Simmons had no manner of right and title to the same, and he, the said Peter J. Claassen then and there unlawfully devising and intending that he, the said James A. Simmons, should appropriate and convert to his own use the said sum of sixty thousand dollars from and out of the moneys and funds of the said association, which said sum of money was, upon and pursuant to the direction and authorization contained in the said check, thereafter, to wit, on the twenty-third day of January, in the year of our Lord, one thousand, eight hundred and ninety, paid by the said Association to the said James A. Simmons, and was then and there appropriated and converted to the use of the said James A. Simmons, against the peace" &c.

In scrutinizing and construing this section we must understand and know: 1st. What the necessary ingredients of a good indictment for "wilful misapplication" under this statute are, and 2d. Whether the counts in question contain the same.

In construing this very section this Court has said: "The "words 'wilfully misapplied' are, so far as we know, new in stat- "utes creating offenses, and they are not used in describing "any offense at common law. *They have no settled technical "meaning* like the words 'embezzle,' as used in the statutes, "or the words 'steal, take and carry away,' as used in com- "mon law. *They do not, therefore, of themselves fully and "clearly set forth every element of the offence charged.* It would "not be sufficient simply to aver that the defendant 'wilfully "'misapplied' the funds of the association. This is well set- "tled by the authorities we have already cited. *There must "be averments to show how the application was made and that "it was an unlawful one.*"

United States *v.* Britton, 107 U. S., 670.

"The rule is *universal* that *every* ingredient of which the "offence is composed must be accurately and clearly alleged "in the indictment, or the indictment will be bad, and may be

" quashed on motion, or the judgment may be arrested, or be " reversed on error."

United States *v.* Cook, 17 Wall, 174.

" In an indictment upon a statute, *it is not sufficient to set* " forth the offense in the *words of the statute, unless those words* " *themselves fully, directly and expressly, without any uncer-* " *tainty or ambiguity, set forth all the elements necessary to con-* " *stitute the offence intended to be punished, and the fact that the* " *statute in question, read in the light of the common law, and* " *of other statutes on a like matter, enables the Court to* " *infer the intent of the legislature, does not dispense with the* " *necessity of alleging, in the indictment, all the facts necessary* " *to prove the case within that intent.* United States *v.* Cruik- " shank, 92 U. S., 542 ; United States *v.* Simmons, 96 Id. 360; " Commonwealth *v.* Clifford, 8 Cush. [Mass.], 215 ; Common " wealth *v.* Bean, Id., 414 ; Commonwealth *v.* Bean, 14 Gray " [Mass.], 52 ; Commonwealth *v.* Filburn, 119 Mass., 297."

United States *v.* Carll, 105 U. S., 613.

" It is necessary for the indictment to state the *means* pro- " posed, in order that the Court may see that they are in fact " illegal. State *v.* Parker, 43 N. H., 83; State *v.* Keach, 40 " Vt., 118 ; Aldermen *v.* People, 4 Mich., 414 ; State *v.* Rob- " erts, 34 Maine, 32."

United States *v.* Cruikshank, 92 U. S., 542.

The same doctrine and cases are reaffirmed in United States *v.* Amsden, 10 Bissel, 287 ; 6 Federal Reporter, 823 ; Re Colman, 15 Blatchford, 418 ; United States *v.* De Graf, 16 Blatchford, 27 ; U. S. *v.* Nolk, 17 Blatchford, 559; 1st Federal Reporter, 431 ; U. S. *v.* Grafton, 4 Dillon, 145 ; U. S. *v.* Walsh, 5 Dillon, 61 ; U. S. *v.* Jackson, 25 Federal Reporter, 551 ; Commonwealth *v.* R. R. Co., 133 Mass., 381, 387.

It is therefore well settled that, since this statute does not make *all* wrongful, or even *fraudulent* dispositions of the funds of banks, crimes, therefore the pleader in this case was compelled, not to stop, in the indictment, at employing the words of Section 5209, but was required to descend to *specific* acts which were claimed to constitute the misapplication.

Again: An indictment, in this class of offences, where, in defining the offence, *indefinite* and " generic" words are used having no fixed common law signification, the indictment must contain *all* averments, whether *affirmative or negative*, which

are requisite to the exclusion of the *possibility* of innocence; no presumptions or intendments are made in favor of the sufficiency of the indictment.

Bishop in his Criminal Procedure at § 637, quoting from Starkey's Criminal Pleadings, page 171, states the rule to be as follows:

"It is a general proposition that no indictment is sufficient "which alleges an act or omission, *in itself innocent*, unless it "discloses *circumstances* which render such act or omission "illegal."

The same rule is stated in Archibold's Criminal Pleadings (4 Am. Ed., from 7th London Ed.), pages 38 and 39, as follows:

"If *any* fact or circumstance which is a necessary ingredient in the offence be omitted in the indictment, *such omission vitiates the indictment*, and the defendant may avail himself of it by demurrer, motion in arrest of judgment, *or writ of error*. Thus an indictment for assaulting an officer in the execution of process, without showing that he *was an officer* of the Court out of which the process issued: Rex *v.* Osmer, 5 East., 304; see R. *v.* Everett, 8 B. & C., 114; for contemptuous or disrespectful words to a magistrate, without showing that the magistrate was in the *execution of his duty* at the time; R. *v.* Lease, Andr., 226; against a public officer for non-performance of a duty, without showing that he was *such an officer as was bound by law to perform that particular duty*; 5 T. R., 623; for obtaining money under false pretences, without showing *whose money* it was, R. *v.* Norton, 8 C. & P., 196; R. *v.* Martin, MSS. Q. B. T. T., 138; . . . that he feloniously did lead away a horse, &c., without saying "*take*;" 2 Hale, 284; in all these and the like cases, the indictment is bad, and the defect may be taken advantage of in the manner above mentioned." . . .

"Not only must all the facts and circumstances which constitute the offence be stated, but they must be stated with such certainty and precision, that the defendant may be enabled to judge whether they constitute an indictable offense or not, in order that he may *demur or plead* to the indictment accordingly," &c., &c.

In United States *v.* Cook (17 Wall., 174), this Court says:

"Offences created by statute, as well as offences at common law, must be accurately and clearly described in the indictment, and, if they cannot be, in any case, without an allegation that the accused is *not within an exception contained in the statute defining the offence*, it is clear that no indictment founded upon the statute can be a good one which does not contain such an allegation; as it is *universally* true that no indictment is

sufficient if it does not accurately and clearly allege *all the ingredients* of which the offence is composed.

"With rare exceptions, offences consist of more than one ingredient, and, in some cases, of many, and the rule is *universal* that *every ingredient* of which the offence is composed must be accurately and clearly alleged in the indictment, or the indictment will be bad, and may be quashed on motion, or the judgment may be arrested, or reversed on error."

Again, in all pleadings, and especially in criminal pleadings, all doubts are resolved against the pleader.

In United States *v.* Linn (1 How., 104–11), the Court says:

"And what is the rule of construction of such a plea? It is that it is to be construed most strongly against the defendant. This is the rule laid down by Chitty (1 Chitty, 578), and in which he is supported by numerous authorities. And the reason assigned for this rule of construction is that it is a natural presumption that the party pleading will state his case as favorably as he can for himself. And if he do not state it with all its legal circumstances, the case is not in fact favorable to him; and the rule of construction in such case is that if a plea has on the face of it two intendments, it shall be taken most strongly against the defendant; that is, says he, the most unfavorable meaning shall be put upon the plea; a rule which obtains also in other pleadings, and a number of cases are put illustrating this rule.

This rule is stated in 1 Chitty's Pleadings, side page 242, as follows:

"It is a maxim in pleading that everything shall be taken most strongly *against* the party pleading, or rather, that if the meaning of the words be equivocal, they shall be construed most strongly against the party pleading them; for it is to be intended that every person states his case as favorably to himself as possible."

Again, wherever a penal statute contains provisos or exceptions, it is necessary in the indictment to negative the provisos or exceptions.

1 Bish. Cr. Pr., Sec. 636.
The State *v.* Barker, 18 Vt., 195.
Comm. *v.* Maxwell, 2 Pick., 139.
1 East. Pleas of the Crown., 167.
Spiers *v.* Parke., 1 T. R., 141.
Gill *v.* Scrivins, 7 T. R., 27.

It has, we think, been definitely decided by this Court that the following classes of misapplications under § 5209 are not criminal, viz. :

1st.—Where the money is parted with in such a way as not to endanger the *loss* of the fund.

2nd.—Where the use or disposition of the fund is in contravention of some rule of the bank where the fund is not thereby put in jeopardy ; that is, does not take in mere *mal-administration*.

3rd.—Where the lending of the funds of the bank is to a party who was abundantly solvent, and where consequently the fund was not put in jeopardy ; and this, although the lending may have been violative of the usages of banks—for instance, may have been loaned upon a check of such perfectly responsible party although he had no funds in bank, against which to check.

4th.—Does not take in or make it criminal, to discount doubtful or even bad paper, the discretion or "lawful authority" to make or not make discounts being possessed by the party discounting the bad paper (108 U. S., 196).

United States *v.* Britton, 108 U. S., 193.

If we are right in this, then, under the authorities cited, *supra*, it was incumbent upon the pleader to negative these exceptions in the indictment, and to show positively and beyond cavil or question, that the offence charged fell within a class of misappropriation made criminal by the Statute. What do we find to be the fact ?

1st.—There is no averment in this count that Simmons, the party for whose benefit the misapplication is alleged to have been made, was insolvent.

2d.—There is no averment that the money was in fact lost to the bank, or that it was even put in jeopardy.

3d.—There is no averment that it was not all repaid.

4th.—There is no averment that the fund was, in any degree, put in danger of being lost.

5th.—There is no averment that negatives, or tends to negative, the fact that the parting with this money was an accommodation loan, based on his check to Simmons, he being perfectly able and ready to pay the loan, at any moment, back.

6th.—There is no averment that defendant was not "lawfully authorized" to make this loan, as provided in paragraph 7, Section 5136, or in § 5209 above.

On the contrary, every averment in this count may be true,

and yet Simmons may have been worth millions of dollars, and the loan may have been an advantageous one to the bank, and have resulted in large gains to the bank, and have been such, that at no time was there the slightest doubt of the transaction being profitable to the bank, and the loan made by one lawfully authorized.

This Court held, in the case of Britton, *supra*, that the first count of the indictment in that case was bad, although it alleged that the defendant, James H. Britton, the President of the bank, caused and procured to be then and there received and discounted by the bank, a promissory note made by James H. Britton to the order of George F. Britton, and which is set forth in the count, for $20,835.00; that the note was endorsed by George F. Britton; that the said James H. Britton converted to his own use the $20,251.63, received on the discounting of said note; that said note, when discounted, was not well secured; that both James H. Britton and George F. Britton were, at the said time, insolvent, as the defendant well knew; and that said defendant, by procuring the discounting of the note and by applying the proceeds to his own use, wilfully misapplied the said $20,251.63, with the intent then and there to defraud the association.

This count was held to be bad, for the reasons stated in the opinion by Justice Wood, on pages 196 and 197. The Court points out the defects in the indictment by saying of the first count: "There is no allegation that the maker of the note was the James H. Britton who was President and Director." But, passing that point, the Court proceeds to say that, assuming that he *was* the President and Director, the gravamen of the charge is that, being President and Director, and being insolvent, he procured to be discounted his own note, the same not being well secured, and the payee and endorser thereof being *insolvent*, and that he, the defendant, well knew this. The Court says:

> "The incriminating facts are that the note was not well secured, and that both the maker and endorser were, to the knowledge of defendant, insolvent when the note was discounted."

The Court might have added the further incriminating facts set forth in the first count, that he had converted the money to his own use, and that he did this with the intent then and there to defraud the association. This is certainly a better count than is the nineteenth count of the present indictment. It has in it every incriminating element, save one as to absence of assent

by the bank, contained in the nineteenth count of the present indictment, to-wit, the incriminating elements following:

1. That the defendant "misapplied" the said sum of $20,251.63 to his own use.
2. That this was done wilfully.
3. That it was the fund of the association.
4. That it was not secured.
5. That the defendant well knew that it was not secured.
6. That this was done by the president of the bank.
7. That it was done with intent to defraud the bank.
8. That they, the maker and endorser, were, as defendant knew, insolvent.

And these cover and embrace *all* of the elements of the offence which are found in the nineteenth count of the present indictment, except the averment as to the absence of the directors' assent to the discount. As to this last matter, we will consider that presently.

This nineteenth count alleges

1. That the defendant was president of the bank.
2. That he did, wilfully and unlawfully, misapply the fund to the use of Simmons.
3. That he did this with intent to defraud the association.
4. That he made this misapplication of the funds by means of a cashier's check drawn on the bank when he *knew* that the said money was not on deposit in the bank, and that the bank did not owe Simmons anything.
5. That he knew it was not "secured" in any way, and that Simmons has no right thereto.
6. That the bank did not know of, or assent to the transaction.

Now, an averment that is found in the first count of the Britton case, and which is *not* found in the nineteenth count of the present indictment, is the very material one that the president of the bank (the maker of the note), and the endorser were both insolvent. It is, we submit, quite impossible, therefore, to hold that the nineteenth count of the present indictment is good, and the first count in the Britton case bad, unless it be so held, because of the averment in this nineteenth count, that the misapplication was *without the knowledge or consent of the association* (and which was absent in the Britton counts).

In commenting upon this first count in the Britton case, the Court says:

> "The gravamen of the charge is that the defendant, being president and director of the association, and being *insolvent*, procured to be discounted his own note, the same not being well secured, and the payee and endorser thereof being also insolvent, which he, the defendant, well knew. * * * * * The question is, therefore, presented whether *the procuring of the discounting of said note by an officer of the association is a wilful misapplication of these moneys, within the meaning of the law. We are clearly of the opinion that it is not.* It is not even necessarily a *fraud* on the association."

It is a thoroughly settled rule of criminal pleading that where the law requires the indictment to set forth the *means* by which the offense was committed, and which offense the statute defines or specifies by the use of "*generic*" terms, as in this case by the use of the words "wilfully misapply," and, also, by the words "with intent to injure or defraud"—there, and in every such case, the "means" set forth must, in deciding whether they *necessarily* show the commission of a crime, be considered *by themselves, unaided by the generic terms so employed in defining the crime.*

Applied to this case, this rule means that the "means" set forth must be sufficient, in law, to show that there was a "misapplication," within the sense of the word "misapply," as used in the statute; also, that the *means set forth must, considered by themselves, be sufficient, in law, to show that the misapplication was wilful.* So, the means set forth must, *considered by themselves*, be sufficient to show the misapplication was *intentional.* So, the means set forth, *considered by themselves*, must be sufficient to show that the intention was to "*injure or to defraud.*"

This rule is directly applied, by this court, in the case of Britton. The indictment in the Britton case, in the first count, which is considered on pages 196–7, expressly charges that the $20,251.63, averred to have been "misapplied" in that case, by the president, were misapplied with the intention, then and there, to defraud the association. And, notwithstanding these averments of this count, the Court says, touching the count, that *for anything that is averred in it*, in stating the means resorted to in enacting the alleged fraud, the note may have been lawfully and properly discounted, "because it is within the discretion of the directors, or the officers or agents, lawfully appointed by them, to discount such a note if they see fit."

This, manifestly, the Court could not say in regard to this count if, in estimating the sufficiency of the means set forth, they gave force to the averment that the discount was made fraudulently with the intent to defraud the bank.

The Court also adds that this count did not "allege that the discount was procured by any fraudulent *means*." And continues:

> "*For all that appears*, the Board of Directors, or officers, or agents, by whom the note was discounted, may, upon knowledge of the facts, *in the utmost good faith*, and for the *advantage* of the association, have decided to discount the note. The discount may have turned out to be a *benefit* to the association, *for* there is *no averment* that the note was *not paid* at maturity, or that the association *suffered* any loss by reason of its discount * * * If an officer of a banking association, *being insolvent*, submits his own note, with an *insolvent* endorser, as security to the board of directors for discount, and they, knowing the facts, order it to be discounted, it would approach the *verge of absurdity* that the use of the discount by the officer for his own purposes would be a wilful misapplication of the funds of the bank and subject him to criminal prosecution.

Here, then, we see, in this ruling by this Court, a conspicuous example and illustration of the rule that a mere averment that a certain misappropriation was done "wilfully," and "with the intent to defraud the association," will not be allowed to make out a sufficient averment of such wilful misappropriation, or a sufficient averment of the fraudulent intent, where the "*means*" by which these things were accomplished is, by the law, required to be stated; and where the stated *means are, in themselves, insufficient in law to show the fraudulent intent or the wilful misappropriation.*

This rule, requiring that the *particular acts and circumstances which make up and establish the fraud*, or other wrong-doing where such fraud or wrong-doing is the ground of the action, must be fully pleaded, and that it is not enough to say that the act was fraudulently committed, is applicable even in civil actions, whether at law or in equity; and no Court has more stringently enforced this rule of practice and pleading than this Court.

In Wood *v.* Carpenter (101 U. S., p. 140) this Court states this rule, in an action for fraud, in these words:

"In this class of cases the plaintiff is held to stringent rules of pleading and evidence, and especially must there be distinct averments as to the time when the fraud, mistake, concealment or misrepresentation was discovered, so that the Court can clearly see whether by ordinary diligence the discovery might not have been made before. This is necessary in order to enable the defendant to meet the fraud and the time of its discovery."

The Court there cites the following cases:

Sterns *v.* Page, 7 How., 819–829.
Moore *v.* Green, 19 How.; 69–72.
Baubine *v.* Baubine, 23 How., 190, and many others.

This doctrine is repeated in Woolensack *v.* Reiher (115 U. S., 102), where the Court says, speaking of pleading an act of fraud:

"*Particular acts of fraud* or concealment should have been set forth by distinct averments, as well as the time when the discovery was made, so that the Court may see whether, by the exercise of ordinary diligence, the discovery might have been before made."

Citing, 7 How., 819; 19 How., 69; 21 Wall., 185; 99 U. S., 201; 2 Wall., 95; 101 U. S., 135; 106 U. S., 391.

If this be the rule regarding civil actions founded upon alleged fraud, much more must it be the rule in criminal proceedings, where the utmost fullness and clearness of averment is required, not only in order to enable the party accused to know what he is required to meet, but also in order that the result of the trial shall be available in any future prosecution. We accordingly find it laid down in Archibold, Cr. Pl., p. 46a that:

"Where a statute annexes a higher degree of punishment to a common law felony, if committed under particular circumstances, an indictment for the offense, in order to bring the defendant within a higher degree of punishment, *must expressly charge it to have been committed under those circumstances, and must state the circumstances with certainty and precision.*"

Citing: 2 Hale, 170.

Or take as an illustration, the indictment for false pretenses. The same author, Archibold, on page 275, says:

> "The indictment must set forth the pretenses. Where it alleged the money to have been obtained by false pretenses, without specifying them, it was holden to be error, and the judgment was reversed. R. *v.* Mason, 2 T. R., 581."

So in 1st Bishop's Criminal Procedure, Section 494, quoting from Chitty, he says:

> "The indictment must state the facts of the crime with with such certainty as the nature of the case will admit. Therefore an indictment charging the defendant with obtaining money by false pretenses, without stating what were the particular offenses, is insufficient."
>
> Citing: 3d Term Reports, 581; and Mall & Selwyn, 387.

In United States *v.* Warner, *et al.*, decided in Southern Circuit of New York, in 1886, by Judge Benedict (26 Fed. Rep., 2616), under this section 5209, the Court held what is stated in these words:

> "The indictment seeks to charge the defendants, Warner and Work, as aiders and abettors of Ferdinand Ward in a wilful misapplication, by Ward of the moneys of the Marine Bank, of which association Ward was at the time a director. An indictment of this character, as all concede, to be good against the defendants Warner and Work, *must state facts showing a misapplication of the money of the association committed by Ward.*"

In view of what has just been said the Court must throw out of its view the words of the indictment, saying that it was done "wilfully, and with intent to defraud," because these words have no weight whatever in ascertaining whether the indictment, when it proceeds to set forth the "means" by which the misapplication was accomplished, has set forth means sufficient in law. These means, so set forth, are tried by themselves, and are not helped out by incriminating adjectives. All these incriminating adjectives are necessary because found in the statute's description of the crime, and were found also in the counts in the Britton case; and yet the Court held that the indictment in that case was bad because these incrim-

inating terms, "wilfully"—"fraudulently"—"with intent to defraud the association"—are not good, as averments of fact, nor taken into account in estimating the sufficiency of the averments of the count in its attempt to satisfy the fundamental rule that the averments, whether affirmative or negative, must be so full and complete as to exclude the *possibility* of their being *all* true, and yet no crime committed within the meaning of the statute.

The Court says, speaking of the statute:

> "There is no provision of the statute which forbids the discounting of a note not well secured, or both the maker and endorser of which are insolvent. It is within the discretion of the directors, or the officers, or agents, lawfully appointed, to discount such a note if they see fit, and it might, under certain circumstances, tend to the advantage of the association."

Precisely so in the case at bar. The 19th count of the indictment says the money was not *secured*. The word "secured" there means what it meant in the Britton case, namely, not secured by a *specific act* making *safe that specific discount* described in the indictment. Therefore, every averment in the count, in the case at bar, might be true, except the said incriminating expletives (which are not counted as just shown), and yet the money for which Simmons gave his check may have been as secure as the bonds of the United States. The defendant and borrower may have been the wealthiest man in New York—the most prudent business man in New York; may have been the owner of half or more of the stock of the bank, and the bank may have received the money back on the very day of or the day after the loan; it may have been a mere accommodation loan, made to Simmons on his check, and the bank may have profited largely by it, and yet every word of this indictment may have remained true, except the word "with intent to defraud," which words, as we have seen and said, do not "count" in determining the sufficiency of the indictment in its setting forth the means of accomplishing the alleged crime, which means the law requires to be set forth, and, also, to be sufficient to make out, as a matter of law, the alleged wilful misapplication.

Without the Knowledge or Consent.

We now come to that clause in the indictment which alleges that the acts set forth as constituting the wilful misapplication

were done "without the knowledge or consent of said association, or its board of directors."

It may be said, in reply to what we have gone over, contrasting the case at bar with the Britton case, that there is this material difference between the indictment in the case at bar, and the one held to be insufficient in the Britton case; viz.: that, in the case at bar, the indictment, in each count, charges that the "misapplication" was made "without the knowledge and consent of the association, or its board of directors;" whereas, in the Britton case, the averment in this regard was "that the defendant did cause and procure to be then and there received and discounted, by said association," &c. In regard to this part of the indictment, the Court, at the bottom of page 196, says:

> "This count does not charge that the note of the defendant was discounted at his instance, without the authority of the board of directors. On the contrary, the charge is that he caused and procured it to be discounted. This implies that it was done by the directors, or other duly authorized officers, or agents."

Now, in reply to any contention that may be made, based upon this difference between the two counts, to wit, the one at bar and the one in the Britton case, the following things are to be carefully noted:

1st.—That, by Section 5136, Clause 7, such banking associations are authorized

> "To exercise, by its board of directors, *or duly authorized officers, or agents*, subject to law, all such incidental powers as shall be necessary to carry on the business of banking, by discounting and negotiating promissory notes, drafts, bills of exchange, and other evidences of debt," &c.

It is thus, by the statute, made precisely as *competent* for the president, or other officer of the bank, if "duly authorized" thereunto, or exercise his *discretion* in discounting notes and making loans, as it is for the directors to do so; and it is a matter of common knowledge that not, perhaps one discount in a score is submitted to *the board itself* as distinguished from its duly authorized officers.

The presumption of law was that the plaintiff's acts were

rightly done under the old maxim, "*Omnia præsumuntur rite et solemniter esse acta donec probetur in contrarium.*"

Lawson on Presumptive Ev., pp. 60, 461.
Bank of United States *v.* Dandridge, 12 Wheat., 64.
Whartons Cr. Law, Vol. 1, § 713. 6th Ed.

To constitute him a duly authorized officer or agent, it was not necessary that his authority should be in writing or by resolution duly and properly passed and entered on the minutes (same authorities).

"If officers of a corporation openly exercise a power which "presupposes a delegated authority for that purpose, and other "corporate acts show that the corporation must have contemp- "lated the legal existence of such authority, the acts of such "officers will be deemed rightly done, and the delegated au- "thority will be presumed."

Justice Story in Bank *v.* Dandridge, *supra*.

Remembering now what we have already stated, (*supra* pp.), that we must take the pleading most strongly against the pleader and that the indictment must contain every allegation necessary to negative the possibility of innocence, what statements do we find in the count to show that the plaintiff was not "lawfully authorized" to perform the acts charged?

The only averment of this count now in question, bearing upon the fact as to whether the defendant was authorized to make the transaction in question, is that which is expressed by the words following (R., p. 64, fol. 81):

> "That he, the said Peter J. Claassen, being then and there such president, as aforesaid, did, *without the knowledge and consent of the said association, or its board of directors*, procure the making, by one Andrew E. Colson, who was then and there the cashier of said association, of a certain writing and check," &c.

These words, "without the knowledge and consent of the said association, or its board of directors," mean here no more than that the association, and its board of directors, did not know of, or consent to, the *specific* transaction, named immediately after said word, at top of page 64. This may have been perfectly true, and yet the president and officers—as is the fact in the case of almost all such transactions—may have received a *general* authority to make discounts, &c., and this *general*

authority is sufficient, under the 7th clause of said Section 5136, to put the president in the position of being as thoroughly authorized to make discounts, &c., upon his own judgment and discretion, as it is for the board of directors to do so.

In other words, a "duly authorized" officer is precisely as competent to make all such transactions as are named on top of page 64 as not being consented to, as is the full board of directors. So this is expressly ordained by said Section 5136, and so by this Court expressly, indicated at bottom of page 196 in 108 U. S. R.

Therefore, there being in this case no averment that the president was not *authorized* to make the transaction, he stands in the same position in which the court, in the Britton case, put the board of directors; and of him, the president, being so authorized, precisely the same thing may be said as was said by the court in the Britton case, namely:

> "It is within the *discretion* of the directors, or *the officers or agents*, lawfully appointed by them, to discount such notes if they see fit. * * * If an officer of a banking association, being insolvent, submits his own note, with an insolvent endorser, as security, to the board of directors for discount, and they, knowing the facts, order it to be discounted, it would approach the verge of absurdity to say that the use, by the officer, of the proceeds of the discount for his own purposes would be a wilful misapplication of the funds of the bank, and subject him to a criminal prosecution."

It will hardly be seriously controverted that the averment that this transaction was without the knowledge and consent of the board of directors is *not* equivalent to an averment that there was in existence no general and "due authority given to the *president to make discounts, &c., for the bank.*" The president being one of the officers named in Section 5136 as authorized to make discounts, &c., if so authorized, it will hardly be successfully denied that an averment that he was *not* so authorized is indispensable to a good indictment.

Upon this point we submit some of the authorities.

Before referring to the authorities, however, in support of the present proposition, it is needful to state, explicitly, wherein and how this authorization of officers to discount, &c., named in the paragraph of Section 5136, is related to and becomes material in considering the offence defined in Section 5209. Section 5209 makes it an offence for a president to wilfully misapply any of the moneys of his bank. Here, taking

this section *by itself*, is a provision, which broadly and generally makes it an offence for any and every president to wilfully misply his bank's funds. But this is not *all* there is in the way of statutory provision entering into the question as to *what* the statute makes to be a misapplication of funds by an "officer." On the contrary, this Court has said, in effect, in the Britton case (108 U. S., 196), that Section 5136 is one in *pari materia* with Section 5209, and must be read along with Section 5209 in obtaining the full definition of the offense by officers of banks indicated by the words "misapply," and, therefore, this Court there says that, by reading Section 5136, along with 5209, it is disclosed that:

> "There is no provision of the statute which forbids the discounting of a note not well secured, or both the maker and endorser of which are insolvent. It is *within the discretion* of the directors, or the officers, or agents, lawfully appointed by them, to discount such a note if they see fit, and it might, under certain circumstances, tend to the advantage of the association."

Here the Court expressly declares, in view of Section 5136, that there can be no misapplication, within the sense, meaning and definition of the word "misapplication," as found in Section 5209, where the act of the officer, alleged to be a "misapplication," is one the doing or not doing of which is, by the 7th Clause of Section 5136, put within the discretion of the bank officer.

Thus it is made to appear expressly, not only by the *letter* of the statute, reading Section 5209 and the 7th clause of Section 5136 together, as they must be, but also by the decision of this Court, that the words "duly authorized" as found in said 7th clause, must (if your decision in the Britton case, holding that a discount, &c., made by authority of the Board of Directors, although made to an insolvent, and with intent to defraud the bank, is not a misapplication within the meaning of that word in said Section 5209, is to be adhered to) be inserted, in obedience to the force of Clause 7, Section 5136, after the word "agent," in the first line of said Section 5209.

With these words so appropriately inserted, this section will, in the enacting clause, or clause defining the offence, read as follows:

> "Every president * * * or agent, not duly authorized by the board of directors, to do or not

to do, according to his discretion, the act alleged to be a misapplication, who embezzles, abstracts, or wilfully misapplies the moneys," &c.

If all the provisions of this statute bearing upon this question what it is that Congress meant to make to be a misapplication, within the sense of this word in Section 5209, are read together, as they must be, and as this court did, in the Britton case, then it is undeniable that such is the reading of the statute when all its parts, essential to a full definition of the crime, are read together.

Keeping now this in mind, we beg, for the sake of clearness, to fix the attention of the Court upon the three classes of crimes, which, as to the character of the indictments by which they must be presented to the courts, have direct bearing upon the present question as to whether counts 19, 21, 23 and 25 are defective in their failure to aver that the defendant, in making the transaction complained of, was not, by the association, duly authorized to do or not to do, within his discretion, the act of discounting the Simmon's check which is complained of.

One of these three classes is that wherein the crime is defined by using some technical word of the law, which, by reason of having, in law, affixed to it a certain known signification, such as the word "murder," needs not to be helped out by averments going to show what constituted the "murder."

The present indictment is, of course, not of that class, because the controlling word "misapply" is not a technical word of the law wherein and whereby it is certainly known and fixed as to what acts and elements constitute the misapplication.

Another of said three classes is that wherein the statute *fully* and *explicitly* sets forth and defines, in the enacting clause, what acts and elements are requisite to make up the crime; and where moreover the Legislature, for reasons of its own, chooses to *withdraw* or *except* from the cases *which would come within said definition*, a case, or a class of cases, and proceeds to do so in some *other parts of the statute than in said definition or enacting clause*.

In this class of cases, of which examples will be found stated in U. S. *v.* Cook (17 Wall., 174, *et seq.*) the indictment *need not* set forth that the act complained of was *not* one of the said *excepted* cases; and, if it be one of the exceptions, that may be left to be shown by the defense.

The case at bar is clearly not of that class, because the statute here contains *nothing in the nature of an exception or a withholding of a case, or a class of cases, from the definition and purview of the crime, and which would necessarily or* PRIMA FACIE *come within the* FULL *and* EXPLICIT *definition of the crime but for the said excepting provision.*

And, besides this fact, that the statute contains no exceptions, so set forth in terms as exceptions, it is plain that the definition in said section 5209, in using said controlling word "misapply," has not attempted to give a *full* and *exact* definition of the offense, but has, on the contrary, left the legislative intent involved in the use of said word "misapply" to be derived, as this Court derived it in the Britton case, by reading this section along with section 5136, clause 7.

These suggestions, therefore, conclusively show that the present case comes within a third, or different, class of cases, viz.: within that class and rule which is stated in section 637 of Bishop's Criminal Procedure (2d edition), and within that part of the section where the author quotes from the 2d edition of Starkey's Criminal Pleadings, page 171, the following fundamental proposition regarding the rule of pleadings applicable to the matter as to what averments are necessary in the class of indictments to which this proposition applies. The quotation from Starkey reads as follows:

> "It is a general proposition that no indictment is sufficient which alleges an act or omission, *in itself innocent*, unless it proceeds to disclose circumstances which render such act or omission illegal."

Applying this rule here we have this result: You have, in the Britton case, in holding the first and second counts in that case bad, explicity decided that a loan, to insolvents, of the moneys of the bank is not a crime (even if made with the fraudulent intent named in the section, to wit, as averred in the said first and second counts in the Britton case—made "by procuring the said note to be discounted, and by applying the proceeds of the discount to his own use, wilfully misapplied the said sum of $20,351.63 of the money and funds of the said association *with the intent then and there to defraud said association, and certain other persons to the grand jurors unknown*") and have determined that an element which was necessary to make up the offence of "misapplying" was still *absent* from that indictment, and rendered it fatally defective within the rule just quoted from Archibold. Several of the defects of these counts are pointed out by this Court, and prominently

the one whereby it appeared that the discount was *authorized* by the board of directors.

This, then is a decision that the discounting by the directors of a note or check, even though it was worthless and was done "with the intent to defraud the association," is, nevertheless, not unlawful, or a crime within the meaning of said Sections 5209 and 5136.

If, therefore, this maxim just quoted from Archibold, and which is "fundamental," and is so thoroughly settled as to have become a maxim in the law of criminal pleadings, means what it says and is to be applied to the present indictment, then said counts are fatally defective in that they fail to set forth *all* the conditions which the statute makes necessary in order to bring this lawful act of making, by authority of the board of directors, the discount in question, within the class made crimes by said Sections.

The same thing which we have quoted from Bishop and Archibold is found in numerous decisions by this Court other than those we have above named, to-wit: Other than U. S. *v.* Cruikshank (92 U. S., 542); Ex parte Va. (100 U. S., 352); U. S. *v.* Carll (105 U. S., 613), &c., &c.

See "*Supra*," page

Therefore, according to the explicit terms of this maxim of the law just quoted, it was indispensable that the indictment should not stop by alleging that the president discounted a check with intent to defraud, &c., but it must proceed further and allege all the "circumstances which are necessary to render such act of discounting illegal"—that is, in this case, allege that the officer had no discretion, under the authority named in Clause 7 of Section 5136, to grant or refuse the loan.

Or, take the case named by Bishop in said Section 637, of Crandall *v.* State (10 Comm., 339). There a party was indicted for harboring a colored person in contravention of the Connecticut statute. It was alleged in the information, that this harboring was *without the license* required by such statute; but it was not alleged that *the school was unlicensed*, and the Court were of opinion, that, by construction of the statute, it would not be an offense to harbor such children, without license, to attend a *licensed* school; therefore, that, for the want of this negative averment (that the school was not licensed), where, indeed, its absence did not create a literal variance, the information was held to be insufficient.

So in Section 636 (1 Bishop's Cr. Pr.), the author cites the case of the State *v.* Barker (18 Vermont, 195), where a statute provided that, if any person shall, on the Sabbath day, exercise any secular labor, business, or employment, *except only such as works of necessity and charity*, he shall be punished by a fine, &c., a complaint not negativing the exception was held to be insufficient.

So the same Section puts the case of Commonwealth *v.* Maxwell (2 Pickering, 139), where a statute declared that no innholder shall entertain, or suffer any of the inhabitants of the respective towns, where they dwell, or *others, not being travellers, strangers, or lodgers in such houses*, to abide or remain in their houses drinking, &c., on the Lord's day, &c., on the penalty, &c.; it was held to be necessary in the indictment to set forth that the persons entertained were neither traveller, strangers or lodgers.

So in the same Section the author cites the case of Elkins *v.* State (13 Ga., 435), where a statute provided that, if any person, unlicensed, shall retail any spirituous liquors, *except in corporate towns, cities*, &c., he shall be guilty of a misdemeanor; an indictment omitting to negative the exception.

In the case of Davis *v.* State (39 Ala., 531), it was held by the Court that an indictment for distilling grain contrary to the provisions of the Alabama statute of December 8th, 1862, is fatally defective, unless it avers that the defendant was *not employed by the Governor to do so.*

In Beales *v.* State (10 Missouri, 498), the Court held that where *several* statutes authorize license to exercise a particular trade, an indictment for the breach of *one* must *negative* a right under the other *statute.*

In Commonwealth *v.* Clark (2 Ashm. Pa., 105), the Court held that in an accusation which sets forth a charge which *is criminal only under certain circumstances*, which are defined by the law, *the omission either to set forth or aver the existence of such circumstances in the indictment, would be fatal to it.*

Applied to the present case, this means that, since even a fraudulent misapplication of the moneys of a bank, by its president, is criminal *only under the circumstances and conditions that he is not authorized by Clause 7, of Section 5136 to do, or not to do, within his discretion, the act alleged to be the criminal misaplication*, therefore, an indictment is bad which fails to allege that the president was not duly authorized to do said act, as provided in said Clause 7.

We, therefore, conclude this statement regarding the insufficiency, in the respect stated, which is common to the 19th, 21st, 23rd, and 25th counts, in failing to aver that the Board

did not authorize the president, according to his discretion, to discount or not such instruments as are named in said counts, by repeating what has been already said, viz: that the present does not present a case where the statute makes a complete definition of an offence in its enacting clause, and then in another part of the act, creates an *exception* which need not be named in the indictment; but it, on the contrary, is a case where, in defining the offence, the statutes uses the indefinite word "*misapply*," and where, therefore, the Court must look at the entire act to see what this word "*misapply*" means. And it is, moreover, a case where this Court has decided that the 7th Clause of Section 5136 must be looked to to see what "misapply" means. And the Court has there decided, in said Britton case, that "misapply" *means to fraudulently convert, without the authority of the Board of Directors, just as if these words were written in the defining clause of Section 5209.*

Therefore, this is a case where the defining clause, in using said word "misapply," in said sense so given to it by this Court, has excluded from the definition of this offense every case where such authority of the directors was had for doing the act charged, and has made it indispensable that the indictment should negative the authority from the directors to make said discount.

We have already fully shown, as we submit, that the words in this indictment, "without the knowledge or consent," are *not* equivalent to an averment that the defendant held no *general and standing authority*, given under Clause 7, Section 5136, by the Board of Directors, to make or not to make the transaction named in the counts as the misapplication; that these words, "knowledge and consent," here point and apply exclusively to the *specific acts* and things which immediately follow them in the count, to wit, procuring Colson, the cashier, to draw the check, &c., &c. This palpably and literally is the very thing, and the *only* thing, about which the indictment avers that the Board did not know, and to which they did not consent.

Now, all this about their not knowing or consenting may be perfectly true, and yet the president may have been authorized, by a standing resolution passed under said Clause 7, to do all the things named in said Clause 7, and which include the very things here alleged to be the misapplication.

This just stated is true, with or without applying it to the rule that pleadings are taken most strongly against the pleader. It is so plainly and expressly the only thing em-

II.

If this Court find any of the counts on which plaintiff was convicted, bad, it must reverse the conviction.

It will not, we apprehend, be questioned that, since a demurrer was interposed to certain specific counts of this indictment (R., p. 59), and since the Court overruled the demurrer as to all of the counts so demurred to, then, if, on inspecting the counts, on which conviction was had, to wit, 19, 21, 23, 1 and 25 (R., p. 80), it shall be seen, by the Court, that *some* of them were bad, and that the demurrer, as to such, ought to have been sustained, then, and in that case, the error in so overruling the demurrer as to the bad counts, is now and here available, and it was not necessary either to place an exception upon the record to the overruling of the demurrer, or to embody such an exception in a bill of exceptions.

The demurrer having taken objection to the counts, was an affirmation, by the defendant, that he objected and excepted to being convicted on such counts, and was an invitation to the Court to so rule, and a *notice* that he made such exception and objection a part of the record for *all* purposes for which, in a Court of review, errors apparent of record are available. It was, therefore, not necessary to *add* to the exception taken by the demurrer and the exception to the overruling.

This is, in principle and legal effect, so held by this Court in—

Slacum *v.* Pomeroy, 6 Cranch, 221.
Suydman *v.* Williamson, 20 How., 433.
Pomeroy *v.* Bank, 1 Wall, 600.
Rodgers *v.* Burlington, 3 Wall, 661.
Railroad Co. *v.* Morgan, 10 Wall., 261.
Barth *v.* Clise, 12 Wall, 403.
Insurance Co. *v.* Piaggio, 16 Wall, 386.
Railroad Co. *v.* Presbyterian Church, 91 U. S., 130.
Also in Supreme Court of Ohio in Bank *v.* Buckingham, 12 O. S. R., 406.

Again—it will be observed in regard to this demurrer (R., p. 59) that it is not a general demurrer to the indictment *as a whole*, but is, on the contrary, a demurrer to *each* of the counts of the

indictment, which are *individually* and *specifically* named as those, and those, alone, which are demurred to.

It will be further observed that four of the counts, namely, 31, 32, 33 and 34, are not demurred to.

It will not be, therefore, successfully controverted that this is a demurrer which is special, separate, specific and distinct as to *each* count which the demurrer names; and it required and compelled the Court to pass upon the question whether *any one* of the counts so demurred to was good; and the overruling of the demurrer was a judgment and decision, by the Court, not that *some one or more* of the counts was good, but was, on the contrary, a judgment and decision that *every* and *each* count demurred to was good; and the ruling on this demurrer was erroneous if this Court shall, by inspecting the record, see that *some one or* or more of the counts were bad.

Abbott's Criminal Brief, Section 45, page 20;
Hendricks *v.* Commonwealth, 75 Virginia, 930;
Ingraham *v.* State, 40 Alabama, 247, 250;
Shroyer *v.* Richmond, 16 O. S. R., 462.

These authorities, in effect, say that, where a demurrer is *general* to an indictment, as a whole, or as *one indictment*, and where the indictment contains several counts, some good and some bad, there the demurrer ought to be overruled because of the good indictments which it contains, and because the *unity* of the demurrer raises the question, not whether *each* count is good, but whether *any one* is good. And these authorities equally indicate that the *the converse* is true, and that where the demurrer is *not* to the indictment as a whole, but one objecting to each count severally, there, if *any* count, so objected to by the demurrer is bad, and yet the demurrer as to it, is overruled, then such holding is error.

Again—Keeping now in mind what has been gone over, to-wit, that the demurrer in this case was *special* and directed against each count; that it is error to overrule a demurrer *generally* if any of the counts so separately demurred to were bad; that the verdict was guilty *generally* upon each one of the five counts named in the verdict (R., p. 80, fol. 112), to-wit, 19th, 21st, 23rd, 1st, and 25th, without distinguishing which one of the five counts he was found guilty on, and further, remembering that the sentence of the court or judgment was under and upon the verdict *generally*, and that the *evidence submitted*, and upon which the verdict was returned, was delivered in, and, by the trial, made applicable to and under, *each one and all of the five counts* on which he was convicted, as well as upon the

others on which the prosecution elected to go to trial (R., p. 80, fol. 110), it follows that if *any one* of the five counts upon which conviction was had was bad the said verdict and judgment cannot be sustained.

We may state our legal proposition which supports the position which we have just enunciated, in the following words of the Supreme Court of Massachusetts:

> "The rule that where the same offense is charged in different counts of an indictment, the *whole* indictment may be submitted to the jury, with instructions, if they find the defendant guilty upon any count, to return a *general* verdict of guilty, is *not applicable* in a case where one count of the indictment is bad and the evidence applicable to such count is submitted to the jury, with the rest, against the objection of the defendant."

In the present case the defendant made objections to each of the counts upon which he was convicted by means of his demurrer.

This objection was, therefore, made a *permanent and continuing exception, of record*, and was, therefore, made in the most significant and available way which was possible. In the further prosecution of the trial, it was not requisite that he should *further or again* object to the delivering in of evidence as to any particular count—this because he had, in the record, objected to delivering in evidence under, or in support of each, and either count, and he had been, by the court, in that regard, overruled.

The legal principle just stated is fully considered in the case of *Commonwealth v. Railroad Company, decided in 1882, 133 Mass., 383-391*, where the question was most elaborately considered, and the proposition which we have above quoted is in the words of the last paragraph of the head note in that case.

The case was one where the defendant railroad company was prosecuted under the statute of Massachusetts of 1874 by the widow of one who was killed by the negligence of the defendant or its servants. This statute imposed "a penalty upon the corporation, if, by reason of its negligence, or carelessness, or of the unfitness, or *gross* negligence, or carelessness of its servants or agents, while engaged in its business, the life of any person, being a passenger, or of any person, being in the exercise of due diligence, and not being a passenger, or in the employment of the corporation, is lost."

In that case there were four counts in the indictment, and

the case was submitted to the jury upon the third and fourth counts only. A *general* verdict of guilty on these two counts was returned; and on that verdict a *general* judgment was rendered, the defendant having alleged exceptions. The court held that this statute created *two* offences, one where the corporation, *as such*, as, for instance, in failing to establish proper regulations in regard to dangerous crossings, or the like, was guilty of negligence resulting in a death, the negligence in *this* class of cases not being, by the statute, required to be "gross" negligence; the other offence, one where the death was caused by the *gross* negligence of a servant or employee. And the question was, whether the third count in the indictment was good or was supported by sufficient evidence to justify the verdict of guilty in the case.

The character of that third count is stated at the top of page 384, and its substance is that, at a certain place the railroad crossed the highway on the same level that Sanborn, when travelling on the highway, and exercising due diligence, was killed; that an engine attached to a freight train was passing, at the place of intersection; that a locomotive was coming in the opposite direction; that while the corporation was thus running the last named locomotive, it was the duty of the corporation, when approaching the said place of intersection, in view of the position of the first-named locomotive and train of freight cars, to reduce its rate of speed and to give proper signals and warning, but that the corporation neglected to do so; and with said last-named engine ran over and killed Sanborn.

The Court elaborately considers the question whether the said third count was good, and whether the evidence justified the verdict, also the question whether the fourth count was good; the verdict and judgment being rendered *generally* upon and under both the third and the fourth counts. The character of which fourth count is stated on page 388, and its substance is the failure to give warning, for eighty rods before reaching the crossing, and that the failure to give such warning resulted in the death.

As to this fourth count, the court held that it was good because that under this section of the statute (164), which differs in phraseology from the preceding section, the negligence of the servants or agents of the corporation, in respect to giving the required warnings, is the negligence of the corporation, and the statute makes no *distinction* between the one and the other, but holds the corporation responsible for the performance of the duty which is expressly enjoined by section 163 of the

same statute; and the corporation must, at all hazards, see to it that this is done, and is punishable if it is not done.

So the Court reached the conclusion that the fourth count of the indictment was good, and the third count of the indictment was bad, and would not justify a verdict of guilty against the corporation.

This, therefore, compelled the Court to determine whether a general verdict of guilty under said two counts, without discriminating *which* count the verdict was based upon, would justify a judgment where exception had been properly taken, and where the evidence delivered in was applicable to *both* the good and the bad count. The Court held that such judgment could not be sustained and set it aside.

In reaching this conclusion, on page 391, the Court says:

> "It cannot be doubted that the two counts under consideration are for the same offense. Each count charges a loss of life of a person not a passenger, by being run over by the engine at a grade crossing, and seeks to impose on the corporation the same penalty, and for the benefit of the same persons. Each count rests on an averment of negligence on the part of the corporation, or of its servants or agents. The difference in the details of the negligence charged does not have the effect to show that two offenses are charged. And it is no doubt a general and beneficial rule of practice, that, where the same offense is charged in different counts of an indictment, the whole indictment may be submitted to the jury with instructions, if they find the defendant guilty upon any count, to return a general verdict of guilty. But this rule is not applicable where one count of the indictment is bad, and the evidence applicable to such bad count is submitted to the jury with the rest against the objection of the defendant. All such general rules of practice must yield, whenever it appears that the just rights of a defendant are insufficiently protected by them."

The court then states how in practice confusion may be avoided by means of the directions of the court to the jury as to how to shape their verdict where a case goes to the jury on an indictment where several good counts are included in the indictment, and then the court adds as follows:

> "But this course cannot advantageously be pursued when the objection is raised at the trial that either

> count in the indictment is insufficient in form; because, in such case, if the whole indictment is submitted to the jury, with all the evidence applicable to each count, and a general verdict of guilty is rendered, and it proves that one count is bad, it cannot be known with certainty but that the jury have found their verdict upon the bad count, and upon evidence which is applicable to that count alone. * * * This exception to the general rule is recognized and stated in the elaborate and excellent exposition of the law upon this general subject, by Justice Dewey, in Commonwealth *v.* Desmarteau, 16 Gray, 1-11-17."

This decision is founded upon such obvious principles of reason and justice, and is so supported by the authorities cited, that we hesitate not to think that this court will adopt it as a true exposition of the law in regard to the point in question.

It results, therefore, that, if any one of the counts, in this indictment, upon which conviction was had, is, in the view of this court, bad, then the judgment in this case is erroneous and must be reversed.

III.

This Court has full authority to examine into the errors made at the trial in the admission and exclusion of evidence and which are specified in the assignment of errors and in the statement of errors heretofore set out, and for that purpose must treat the assignment of errors as in the nature of a bill of exceptions.

A. There has been granted to the plaintiff in error herein a good and valid writ of error to and a right to review in this Court from the judgment of conviction and sentence.

In re Claassen, 140 U. S. R., 200.

The act, under which the writ is sued out, conferred upon the Supreme Court power to review a class of cases over which it previously had no jurisdiction by appeal or writ of error, but is entirely silent as to the *practice* or *procedure* upon such appeal or writ of error.

The grant of this power carried with it, by implication if

not expressed, every incident and authority necessary to make the power effectual.

"It is a well established principle that Statutes containing "grants of power shall be construed so as to include the "authority to do all things necessary to accomplish the object "of the grant, and to enable the donee of the power to effect "the purpose of the Act. Domat expresses the idea as fol- "lows: 'All laws necessarily bear with them all the powers "and incidents necessary to carry out their intention.' (Sedg- "wick Const. & Stat. Laws, p. 245) Sedgwick says: 'When "a statute commands an act to be done, it authorizes all that "is necessary for its performance.' (Sedgwick, 228). Potter's "Dwarris states the rule to be: In statutes, *incidents are "always supplied by intendment*; in other words, whenever "a power is given by statute, everything to the making of it "effectual is given by implication, for the maxim is, '*Quando "lex aliquid concedit, concedere videtur et id per quod devenі- "tur ad illud.*'"

Steif *v.* Hart, 1 Comst., 20.
See also Kent's Comm., Vol. 1, p. 464.
Potter's Dwarris on Stat., p. 123, Rule VIII.
Sutherland on Stat. Const., Sec. 341, Sec. 343.
In re Nagle, 135 U. S. R., 1.
Robbins *v.* Gorham, 25 N. Y., 594.
Mayor *v.* Sands, 105 N. Y., 210, 218.
State Smith *v.* Burbridge, 24 Fla., 112.
Holmes *v.* Carley, 31 N. Y., 290.

"What is implied in a Statute, pleading, contract or will is "as much a part of it as what is expressed. (Konig *v.* Bay- "ard, 2 Paine, 251; Haight *v.* Holley, 3 Wend., 258; Rogers "*v.* Kneeland, 10 Wend., 218; Fox *v.* Phelps, 20 Wend., 447; "Comyns Dig. title Devise, N. 12.) A thing within the inten- "tion of the makers of the statute is as much within the stat- "ute as if it were within the letter. (Stowel *v.* Zouch, 1 Ploud, "366; U. S. *v.* Freeman, 3 How., 565.)"

U. S. *v.* Babbitt, 1 Black, 55 (XVII., p. 96).
County of Wilson *v.* 3d Nat. Bk., 13 Otto, 770.
Southerland on Stat. Const., Sec. 334.

"Statutes giving the right of appeal are always liberally "construed in furtherance of justice, *and such an interpreta- "tion as will work a forfeiture of such right is not to be fa- "vored.*"

Pearson *v.* Lovejoy, 53 Barb. (N. Y.), 410.
State *v.* Williams, 35 Mo. App., 541.

Such a construction must be given to a Statute as will prevent injustice, oppression or absurd consequences.

Reydenfeldt *v.* The Daney Gold Mine, 3 Otto, 634 (XXIII. p. 995).
Chew Heong *v.* U. S., 112 U. S., 536 (XXVIII., p. 776).
U. S. *v.* Kirby, 7 Wall., 486 (74 U. S., XIX., 280).

"The language of Lord Coke, that a statute made in the affirmative, without any negative, expressed or implied, does not take away the common law, is now elementary. (2 Just., 200; Stafford *v.* Ingersol, 3 Hill, 41; Clark *v.* Brown, 18 Wend., 220; Almy *v.* Harris, 5 Johns., 175; Wood *v.* Chapin, 12 N. Y., 521, 526; Hall *v.* Tuttle, 6 Hill, 42; Dwarris on Stat., 638; Smith's Comm. on Stat. Law, p. 771, Section 660.) The rule has sprung up under the decisions in regard to remedies and all that is held is, that if the statute gives a new remedy and is merely affirmative in its terms without any negative, express or implied, it does not take away the common law remedy."

Hardman *v.* Bower, 39 N. Y., 198.
Dudley *v.* Mayhew, 3 Comst., pp. 9, 15.
Sutherland on Stat. Cons., Section 398.

In Southerland, *supra*, the rule is stated as follows: "If a new right is created by statute and it is silent as to the mode of its enforcement or as to the form of redress in case of invasion, then the proprietor of that right may resort to the common law or the general statutory procedure *for remedial process.*" Citing numerous cases, for which see page 510, n. 1.

In Robbins *v.* Gorham, 25 N. Y., p. 594, *supra*, Judge Selden says: "The power to punish of necessity gives the power to bring the delinquent before the Court for punishment. "*If no suitable process were in use, and none pointed out by statute, I think it would be the duty of the Court to devise one for the purpose.* (Dudley *v.* Mayhew, 3 Comst., 9; Ever *v.* Jones, 2 Salk., 415; Foliamb's Case, 5 Coke, 115 a; Bac. Abr. Courts, E.")

"Where a Legislature makes a plain provision, without qualification, *the Court can make none.* McEver *v.* Regan, 2 Wheat., 25; Patten *v.* McClure, Martin & Yergers Term, 345, and cases cited."

"Cocke & Jacks *v.* McGinniss, *id.*, 365; Troup *v.* Smith, 20 "John., 33."

Lessee of French *v.* Spencer, 21 How., 228 (XVI. 99).

It would seem then, from the decisions cited, that if Congress has given a right of appeal without the intermediate process or procedure to render that appeal effectual, this Court will supply such process and procedure. To so hold is to make the statute a delusion and a snare and to lead to unjust and absurd consequences, unless it can be shown that Congress had no *power* to (legislate that) exceptions taken before the passage of the act could furnish ground for review and that therefore the Court has none. If Congress had the power to pass an act specifically and in terms granting Bills of Exceptions or other remedial procedure to all cases falling within the purview of the act, then that power must be found to be implied in this act just as forcibly as if expressed and we shall therefore proceed to examine this question of power.

It cannot be successfully contended that Congress had no power to pass an Act allowing exceptions taken at a trial and which were taken before the Act went into effect to be reviewed and that therefore this Court has no such power.

The only limitation upon the power of Congress to pass retroactive laws is that such laws shall not affect vested rights or be *ex post facto laws.*

Southerland on Stat. Const., p. 538.
Satterlee *v.* Matthewson, 2 Peters, 413.
Watson *v.* Mercer, 8 Peters, 88, 110.
U. S. *v.* Hove, 3 Cranch, 79 (book 2, L. C. P. Co., p. 372).

The law we are considering, with the meaning and scope we give it, neither affects vested rights nor becomes an *ex post facto* law as defined by the decisions.

Gut *v.* Minnesota, 9 Wall., 35.
Fletcher *v.* Peck, 6 Cranch., 87.
Kring *v.* Mo., 17 Otto, 221.

"A remedial Statute may affect past as well as future trans- "actions and where it appears that the Legislature intended to "provide a remedy for evils existing, as well as those likely to "occur, it will be extended to such cases *although there are no "retroactive words in the Act.*"

People *ex rel.* Pells *v.* Supervisors of Ulster, 65 N. Y., 300, citing 1 Kent. Comm., 455.
Foster *v.* The Essex Bk., 36 Mass., 245, and
Underwood *v.* Libbey, 10 S. & R., 107.

So here, Congress has passed a remedial Statute of which plaintiff in error has the benefit, and the act should not be rendered valueless to him by depriving him of a chance to review these very errors and mistakes for which the act was passed.

B. This Court has decided that plaintiff in error cannot have a bill of exceptions, but it has not decided that he cannot present erroneous rulings, made at the trial, for review, or that the same cannot be reviewed by this Court, nor has the Court decided that plaintiff cannot have something else which will be considered by it as the equivalent of a bill of exceptions.

On the contrary, it has said in its opinion specifically, that "the assignment of error and the joinder therein by the District Attorney does not affect the ground upon which it denies the motion for the mandamus."

If it be contended that this Court has frequently decided that it will not review errors in the admission and exclusion of evidence upon a trial except upon a bill of exceptions properly signed or sealed, the answer is that those decisions have no applicability to this case, for the following reasons:

These decisions were all rendered prior to the passage of this act, were all in civil and not criminal cases, and all arose under different conditions and circumstances. No assignment of errors in its present form was ever known or contemplated prior to the passage of this act, except under the Act of February 6, 1889, Chapter 113, under which this Court promulgated Rule 35, on November 3, 1890. In and by that rule this Court lays down no practice or procedure relating to bills of exceptions.

Prior to that time the assignment of errors was a mere pleading for this Court, concisely pointing out the errors sought to be reviewed, and although forming a part of the return to this Court under Sec. 997 of the Revised Statutes, yet the failure to annex it did not impair the jurisdiction of this Court to hear and decide the writ of error. If there was an assignment in plaintiff's brief it was sufficient.

Independent School Dist. *v.* Hall, 106 U. S., 428.
Gumbel *v.* Pitkin, 113 U. S., 545.

No time was fixed for the filing of said assignment of errors prior to said rule 35, and presumably it was in sufficient time

if filed at any time prior to the final transmission to this Court of the record. By rule 35, however, it was provided that the assignment not only *had* to be filed with the petition for the writ of error, but also that it should contain in addition to what assignments had previously contained the following, viz :

" When the error alleged is to the admission or the rejection " of evidence, the assignment of errors shall quote the full " substance of the evidence admitted or rejected. When the " error alleged is to the charge of the Court, the assignment " of errors shall set out the part referred to *totidem verbis*, " whether it be in instructions given or in instructions " refused."

It is respectfully contended that this is exactly what a bill of exceptions heretofore contained neither more nor less. This Court surely did not intend that the record should contain two, possibly long and verbose papers, identical in language and contents, the only difference being that one was settled and allowed by the Judge and the other not. It would seem then that this Court, having come to a full appreciation of the fact that a trial Justice, who had committed such grave errors upon the trial as would certainly lead to a reversal, if properly presented to this Court, was nevertheless given such power in the settlement of bills of exceptions as to be able to so trim them as to make them perfectly worthless to the appellant and thus indirectly deprive the appellant of the review which the law gave him. What more natural then, in these days when all testimony is taken down by a stenographer, than to allow the appellant to make up his own bill of exceptions to this Court and to give to the respondent, if the appellant abused his privilege, the power to bring up by certiorari the whole record and thus have the assignment corrected by this Court, or if the appellant had properly set forth what had taken place on the trial then to join issue upon it and go to argument upon it as it stood. Being thrown back upon the common law by the failure of the act to provide remedial procedure as we have seen, supra, we find that our contention is entirely in accord with such common law practice.

In the case at bar the District Attorney filed a joinder in error in which he says:—" there is no error either in the " record *or proceedings aforesaid* or in the giving of judgment " aforesaid and he prays that the said Supreme Court, before " the Justices thereof, now here, may proceed to examine as " well the record and proceedings, *as the matters above as-* " *signed for error*, &c."

By the plea of in *nulla est erratum* the defendant in error virtually puts in a demurrer by which the facts stated in the assignment are admitted, but the claim is made that they present no error.

Tidd's Practice, Vol. 2 4th. Ed. p. 1085.
Graham's Pr. [N. Y.], 957, 958.
Dane's Digest of Am. Law, Vol. V. p. 73.
Bacon Abr., Vol. 2, p. 217, [assig. errors].
Archbold's Pr., Vol. 1, p. 231, Ed. pub. 1823.

Tidd, says, p. 1087, "by pleading *in nulla est erratum*, the "defendant in error admits the record to be perfect, the effect "of his plea being that the record in its present state is with- "out error [1 Salk., 270], and therefore, after *in nulla est* "*erratum* neither party can allege diminution or pray a "certiorari."

At common law, if the defendant desired to traverse the facts set out in the assignment of errors his proper practice was to file a special plea as in bar, in release of errors, &c., and then to take out *certiorari* to sustain and thus bring up the record.

See same authorities.

The assignment of errors is the pleading of the appellate Court and contains all the facts necessary to show the errors committed, and if these facts are outside the record, it is the duty of plaintiff in error in the first instance to take out *certiorari* unless the defendant plead *in nulla est erratum* in which event it becomes entirely unnecessary, the facts stated being admitted by that plea to be correct, but the effect of them immaterial.

Same authorities.

B. Defendant cannot claim that the above doctrine is new and novel and that he should not be deprived of the benefit of former established practice.

If the assignment of errors does not suit him or is not full and explicit enough, he stands in no position to complain. There was tendered to him long since a full and fair bill of exceptions with full power to propose amendments thereto and to have them properly settled by the trial Judge but he chose to reject the same *in toto* and he cannot now complain that he hasn't got it.

C. That plaintiff has an undoubted right to review any errors apparent on the face of the record is no answer to plaintiff's contention, and no excuse for depriving plaintiff of a full review.

The statute, as we have shown above, gives plaintiff the right to review the erroneous rulings which took place on the trial and it is no answer to say that we can have a partial review when we are entitled to a full one.

It will be remembered that it is by no fault of plaintiff's that he has not before this Court a full and perfect bill of exceptions in the usual form prescribed for Civil Cases, and if it is said that this Court cannot review rulings made on the trial on an agreed state of facts, then the answer is as above that if the Court find that the Statute has given the plaintiff a right to a full and adequate review but there is no proper procedure at present to make the act effectual it is the duty of the Court to make or find one.

I know of no statutory provision, no rule of this Court and no practice at common law that made a bill of exceptions in criminal cases, a pre-requisite to a review upon appeal or writ of error.

IV.

The exclusion at the trial of all evidence of what transpired after January 29, 1891, the day of the closing of the Bank, was erroneous.

At folio 117, p. 82, will be found this statment :

"THE COURT : I rule generally that everything that happened after the bank closed is immaterial to this issue.

Counsel for defendant takes an exception."

Compare this ruling with those particular rulings specified in the sixth assignment of error at page 90, fol. 130, of the Record. The 19th, 23d and 25th counts charged defendant with causing three cashier's checks to be drawn for $60,000 each, and said moneys paid out to the parties therein named "the payment thereof not being then and there in any way secured."

It appeared upon the trial, however, that three collateral notes had been made by the respective parties named in this count, on the 27th of January, secured by stock of the Lenox Hill Bank, and the Equitable Bank, and then came the question:

"Q. Have the three $60,000 notes been paid?

Objected to as immaterial. Objection sustained. Exception.

Q. You do not know whether they are in the bank yet, or not, do you?

Objected to. Objection sustained. Exception."

We have a right to assume, in passing upon the materiality of these questions, that, if answered, they would have shown that the bank never lost a dollar by the transaction in question, but that the securities received by it paid the loan.

If this were so, then we find that this defendant has been convicted and sentenced to six years imprisonment for loaning moneys of the bank to abundantly responsible parties, who before any trouble has arisen or any cloud of suspicion cast upon the operation have secured the bank with good and perfect collateral out of which the bank is entirely recouped.

Had such evidence been admitted, and the fact proved, can it be doubted for one moment that the case would have been infinitely stronger than the case of U. S. *v.* Britton, 108 U. S., 193, which we have cited upon the sufficiency of the counts, and that the motion to acquit, fol. 131, p. 91, must have been granted. We think not. The idea of the trial Justice as to the relevancy of this evidence may be further gathered from the portion of his charge which will be found at fol. 132, in the following words, viz.:

"Here, I should say, that it is not a question of restitution after the doing of the act, but of the act done by the accused on the 22nd. On the 27th—the money having passed out of the bank on the 22d—notes were given and collateral was given, as it would seem, but it cannot be said that because the bank subsequently availed itself of those collaterals, therefore, there was no misapplication of the bank's money on the 22d. So the question is not whether the bank saved itself finally, but whether or not, on the 22d, when this defendant caused the $60,000 cashier's check to be given to Simmons, he applied the money of the bank to the use of Simmons. Restitution afterward, or the fact that the bank got collaterals afterward,

does not affect the question of his criminality in doing the act done on the 22d.

This part of the charge was duly excepted to. One of the substantive things in the indictment under this § 5209, that had to be pleaded and proven before the defendant could be convicted, was, intent to defraud or to injure the bank. If the bank was not in fact injured through the original act of defendant because of the care of the defendant in exacting and procuring collateral, how could there have been an intent to injure it?

The statute reads: "With intent in either case to injure or defraud the association." If the jury are to throw out of consideration every act of a man subsequent to an alleged embezzlement or misconduct, in very many cases, a man would be utterly unable to prove himself innocent of a guilty intent.

It does not seem necessary to cite authorities to the proposition that a man has a right to prove any *fact* or act whatever, either before or after an act, that has a bearing on the act itself, to show freedom from guilty intent. The jury are the judges of whether it does show such freedom.

It is undoubtedly true that after a man has been *discovered* in a crime, his subsequent acts cannot be pleaded by him, but here the defendant had not been discovered. Discovery did not come for two days later, or until the 29th.

The defendant was to be presumed innocent by the jury, and the burden was upon the prosecution to prove guilty intent; its contention was that the natural consequences of the loan of the moneys to Simmons, Pell & Satterlee was to produce loss, and that the defendant intended the natural consequences of his act. This evidence, however, if admitted, would have proved the parties to whom the loan was made, men of their word, responsible and the business *done for the benefit of the bank*, and would have destroyed any such presumption and have cleared the defendant.

The rejection of the evidence, therefore, and the charge of the Judge upon it, were erroneous, and entitle the plaintiff herein to a reversal.

V.

The admission of a mass of testimony by different witnesses wholly unconnected with the plaintiff, of what they did with certain bonds which they received of Pell, was incompetent and erroneous.

A portion of this testimony, with the objections and exceptions to it, will be found at pages 83, 84, 85, 86, 87 and 90. The reason of the admission of the testimony is stated by the judge at page 90, as follows:

"MR. TENNEY: I understand that this evidence is all taken subject to the objection that I made.

THE COURT: Yes. I admitted it on the ground that as the evidence stands the question will be submitted to the jury whether or not there was a combination, an agreement between Mr. Claassen and Mr. Pell and Mr. Simmons that the moneys of this bank—the proceeds of these 622 bonds—should be applied to paying Leland; and if the jury are satisfied that there was a combination or agreement of that kind, then of course this is all material.

MR. TENNEY: The point I make is that it was in the absence of Mr. Claassen, and the further point that he is on trial here individually and not as a conspirator.

THE COURT: Of course. Still, the rules would be the same. If the jury find that he conspired with Pell and Simmons to take the money of this bank to pay the debt of Simmons to Leland by a check, then this is material notwithstanding the fact that he is not indicted under the conspiracy statute, but is indicted for allowing the money to go that way."

The indictment, count 1, charges, after enumerating the 622 bonds, that "he did then and there wilfully and unlaw-" fully, and with intent to injure and defraud the said associa-" tion *embezzle the said bonds and written obligations and convert them to his own use against*," &c.

This Court has said in a similar case:

"It follows as a rule of criminal pleading that in an indict-" ment for conspiracy under section 5440, the conspiracy

"*must be sufficiently charged*, and that *it cannot be aided by* "*an averment of acts done by one or more of the conspirators* "*in furtherance of the objects of the conspiracy.*—Reg. *v.* King, "7 Q. B., 782, Commonwealth *v.* Shedd, 7 Cush., 514."

United States *v.* Britton, 108 U. S., 199.

An act done to effect the object of the conspiracy is material matter *and it must be alleged and proved* with the usual certainty required in criminal pleading.

United States *v.* Milner, 36 F. R., 890.
United States *v.* Thompson, 29 F. R., 86.
United States *v.* Watson, 17 F. R., 145.

An omission so to allege and prove the same is fatal to the indictment.

United States *v.* Reichert, 32 F. R., 142.

"The rule that excludes all manner of evidence that is for- "eign to the point in issue, applies more strongly, if possible, "in criminal cases than in civil."

Phillips on Ev., Ed. of 1889, Vol. 1, p. 175.

It is respectfully submitted that the rule as to the admissibility of the class of evidence now being considered is not that stated by the Court. The defendant was called upon to meet the statement that *he* had embezzled the bonds and nothing more. He was not called upon to meet and combat facts not stated in the indictment and evidence not consistent or in accordance therewith.

The record says: "The prosecution was permitted to "trace through numerous witnesses, *no one of whom had any* "*personal connection with Peter J. Claassen or transaction with* "*him* respecting the same, what became of 622 bonds of the "par value of $1,000 each delivered by Claassen to Pell for sale "on the 23d and 24th days of January, 1890, under the follow- "ing objection, etc."

Of what materiality was it what the transferees did with these bonds?

It has never for a moment been pretended or charged or proved that the plaintiff herein personally got one penny of the proceeds or was to have gotten one penny of the proceeds.

The rule is elementary that acts and admissions of others

are not admissible in evidence against an accused person *until* he is connected with them.

Wharton on Ev., 3d Ed., § 1183, and other cases cited, N. 4.
Wharton, Cr. Ev., 8th Ed., § 695.
Lambert *v.* People, 76 N. Y., 220, 228.
U. S. *v.* Morrow, 4 Wash. C. C., 733.

In this case, however, after he had been allowed to testify at length under the specific objection and exception, as to what he had done, every single witness testified that he did not know the plaintiff in the transaction or have anything to do with him or he with them. Pell is not called by the prosecution. Simmons is not called by the prosecution. Wallack and Kilduff, the two members of the firm of Pell, Wallack & Co., are called but fail to connect the plaintiff, and yet the entire testimony is admitted, unconnected, to enable the prosecution and the judge to say "he ought to have known and whatever he ought to have known he did know."

The testimony, therefore, was inadmissible for these reasons:

1st. It was not pleaded in the indictment and the defendant could therefore introduce no proof of it, and the plaintiff herein was not called upon to meet it.

2d. It was entirely immaterial to the point at issue, conversion to their own use by others not being any evidence against the plaintiff of conversion by him.

3d. The plaintiff was not first connected with the parties who converted the property and until this was done it was irrelevant and incompetent.

VI.

The exclusion of the testimony of the President of the bank as to what was the value of the stock of his bank was erroneous.

The trial justice held that the only way to prove the value of bank stock was by its statement (R., p. 89, fol. 128). This testimony, it will be perceived, was very important for the

plaintiff, as going to show the value of securities put up as collateral to the three loans. It is impossible to purchase stock of several banks in New York, because there is none of it for sale, but there is much demand for it, and constant bidding. Under such circumstances, can it be possible that you cannot call the President, and prove by him when the last sales were made? At what price? Is the stock still quoted at same price? Is it worth the same? He does not stand in the position of an expert, nor subject to expert rules, but can testify to the value just as much as the manufacturer of a piece of goods can testify to the value of the goods manufactured by him.

VII.

The part of the charge of the Trial Judge, quoted at fol. 133, page 92, was clearly erroneous.

No such rule of law, as stated, exists. Simmons and Pell had both been indicted for the same offense. They were equally as accessible to the District Attorney as to Mr. Claassen. It was not pretended that Claassen prevented them from testifying in any way, manner or shape. The law gave to each of them the opportunity to refuse to testify, if called, on the ground that their testimony might criminate themselves. If this were not the case, the natural instinct of these men would be to save themselves, if possible, at the expense of the man on trial, and necessarily and naturally, therefore, they would be hostile witnesses to him. The Court of Appeals of the State of New York say in regard to this, "the circum-"stances of the non-production of the absent defendant, al-"though very slight, might have been submitted to the con-"sideration of the jury, but the force of the circumstance should "not be left to them, *and it was error to charge that the plain-"tiff was bound to produce him, and not having done so, the "jury might infer that his evidence would have been prejudicial "to him.* (Gordon *v.* The People, 33 N. Y., 401.)"

Bleecker *v.* Johnson, 69 N. Y., 313.

It has been repeatedly decided that *no presumption of any*

kind arises, in a criminal case, from the non-production of a witness, where the witness was merely corroborative, and was equally accessible to the other side.

State *v.* Rosier, 55 Ia., 517.
Comm. *v.* Webster, 5 Cushing, 295, 316.
Abbott's Trial Brief (criminal), Sec. 765.

Had they been jointly indicted, the evidence of one of them would not have been admissible in favor of the other against the United States.

United States *v.* Reed, 12 How., U. S. R., 361.
Wharton *v.* Cr. Ev. 8th Ed. § 445.

VIII.

The case made on the motion for a new trial before the Court in Banc, is no part of the Record here and the defendant in Error is not aided by any statements contained therein and cannot refer to the same.

In the Matter of Cloassen, 140 U. S. 200.

IX.

The indictment must be held defective in all its counts, and the judgment of conviction and sentence must be wholly set aside, or if any of the counts are sustained, then, for the numerous other errors cited, the judgment must be set aside, and a new trial granted.

Dated New York, November 24, 1891.

HECTOR M. HITCHINGS,
Attorney for Plaintiff in Error.

SAMUEL SHELLABARGER,
Of Counsel.

Office Supreme Court U. S.
FILED.
DEC 10 1891
JAMES H. McKENNEY

In the Supreme Court of the United States.

OCTOBER TERM, 1891.

PETER J. CLAASSEN, PLAINTIFF IN error,
vs.
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IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF FOR THE UNITED STATES.

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STATEMENT OF THE CASE.

This is a writ of error to a judgment and sentence of the circuit court of the United States for the southern district of New York, by which Peter J. Claassen, the defendant below and the plaintiff in error here, was sentenced to be imprisoned for the period of six years, the sentence to be executed at the Erie County penitentiary. (Record, pp. 81 and 82.) The indictment against the de-

fendant on which verdict and judgment was entered contained forty-four counts. To all except the thirty-first, thirty-second, thirty-third, and thirty-fourth counts the defendant demurred, on the ground that the matters therein contained, in manner and form as the same are therein set forth, are not sufficient in law. (Record, p. 59.) To the thirty-first, thirty-second, thirty-third, and thirty-fourth counts of the indictment the defendant pleaded not guilty. (Record, p. 73.) The demurrer of the defendant was overruled (Record, pp. 59 and 73), and the defendant was ordered to plead to the other counts of the indictment, which he did, pleading not guilty to each and every count. (Record, pp. 73 and 74.) A jury was impaneled May 8, 1890, and the trial begun, which continued until the close of the evidence, May 26. (Record, pp. 74 to 79, inclusive.)

At the close of the evidence, the counsel for the defendant moved the court that the Government be required to elect the counts upon which it would proceed to the jury, which motion was granted. The Government elected to go to the jury upon the first, ninth, eleventh, nineteenth, twenty-first, twenty-third, twenty-fifth, twenty-ninth, thirty-first, thirty-third, and forty-third counts of the indictment (Record, p. 80). After the argument of counsel and the charge of the court, the jury found the defendant guilty of the offenses charged in the first, nineteenth, twenty-first twenty-third, and twenty-fifth counts of the indictment, and not guilty as to the ninth, eleventh, twenty-ninth, thirty-first, thirty-third, and forty-third counts of the indictment (Record, p. 80). The sentence on this verdict was general, that Peter J. Claassen be imprisoned for the

period of six years. The charges of the indictment are under section 5209 of the Revised Statutes, the penalty in which is that the person convicted shall be imprisoned not less than five nor more than ten years.

DEFECT IN THE ASSIGNMENT OF ERRORS.

Rule 35 of this court requires that whenever a writ of error is taken, as this is, from a circuit court direct to this court, under section 5 of the new court of appeals act, the plaintiff in error shall file with the clerk of the court below, with his petition for the writ of error, an assignment of errors which shall set out separately and particularly each error asserted and intended to be urged. Such assignment of errors is required to form part of the transcript of the record and be printed with it, and errors not assigned according to the rule will be disregarded, unless the court at its option shall notice a plain error not assigned.

The only errors assigned by the plaintiff in error in this case are with respect to the admission and rejection of evidence and to the charge of the court and the language of the court in its charge. There are thirteen assignments of error altogether. The first, second (Record, p. 83), third (Record, p. 87), fourth (Record, p. 89), fifth (Record, p. 90), and sixth (Record, p. 90) are with respect to the admission of evidence and the refusal of the court to rule out the same. It has been decided by this court, in respect of this very case (*In re Claasen*, 140 U. S., 200), that there was no power in the court below to sign a bill of exceptions for evidence admitted or rejected before the

passage of the act of March 3, 1891, conferring on the Supreme Court jurisdiction in error in such cases. It is also decided in that case that the case settled by the judge for consideration on a motion for a new trial before the three judges in the circuit court can not be treated by this court as a bill of exceptions. No bill of exceptions is shown in the record by which the evidence can be made to appear here, or errors of the court, in admitting evidence, presented. There is no basis, therefore, upon which these assignments of error can be made.

The seventh assignment of error is that at the close of the evidence for the prosecution, there being forty-six counts to the indictment, counsel for the defendant moved that the plaintiffs be directed to elect which of the counts they chose to rely upon. The court stated that the motion would be granted if made when the testimony was closed, but that it would not be granted at this stage of the case; to which the defendant excepted. There is no bill of exceptions, and can be none, in which the fact stated in this assignment of error is made to appear. It does appear, however, in the record (page 80) that a motion of this kind made by the defendant was granted after the evidence was all in. It is not seen how the assignment of error under these circumstances is entitled to further consideration.

The eighth assignment of error (p. 91) is based upon an alleged refusal of the court to strike out certain evidence on a motion by counsel for the defendant, to which it is said that an exception was noted by the defendant. There being no bill of exceptions showing the evidence

upon which the motion was founded, it, of course, can not be considered.

The ninth assignment of error is for a refusal of the court to direct an acquittal, which was excepted to. There is no bill of exceptions to show, first, that such a motion was made, or, second, the evidence upon which the correctness of the ruling of the court could be considered.

The tenth, eleventh, twelfth, and thirteenth assignments of error are based on alleged erroneous instructions of the court. As there is no bill of exceptions to show what the instructions of the court were or the evidence to which they applied, these assignments of error have no foundation and do not require argument.

In the brief of counsel objection is made to the five counts, the first, the nineteenth, the twenty-first, the twenty-third, and the twenty-fifth, as not stating a crime within the meaning of section 5209 of the Revised Statutes, under which they were drawn. There is no assignment of error based on the ruling of the court in overruling the demurrer filed by the defendant to these counts. As a matter of fact the sufficiency of the counts was not argued on the motion for a new trial or in arrest of judgment. They are not referred to in the assignment of errors. Under the rule, therefore, it would seem that they do not now call for the attention of the court, and that the writ of error should, on this ground, be dismissed.

ARGUMENT ON THE INDICTMENT.

If, however, the court shall of its own motion examine the indictment and those counts upon which a verdict was

rendered and the sentence pronounced, it will be readily seen why the objections to the indictment were not thought of sufficient importance to require a mention of them in the assignment of errors.

1.

The first count of the indictment charges that Peter J. Claassen, being the president of the Sixth National Bank of the City of New York, by virtue of his office and while acting as such president, received into his possession certain bonds of a total value of more than half a million dollars, which he held for and in the name and on the account of the said banking association; and that he did, willfully and unlawfully and with intent to injure and defraud the said association, embezzle the said bonds and written obligations and convert them to his own use. It is objected that this indictment is not sufficiently specific. How it could be more specific, counsel do not attempt to say. It states the relation of confidence occupied by the accused; it states the fact that he acquired certain property by virtue of that relation; and it states that that property, thus acquired, he embezzled and converted to his own use, which includes the three essential elements of the crime of embezzlement.

It is stated that it should say how he embezzled the property. This is wholly unnecessary. The term "embezzlement" as used in the statute has a settled technical meaning, like the words "steal, take, and carry away," and there is no more necessity for telling how the embezzlement occurred than there is in an indictment for larceny to set forth

how the property stolen was taken away. It is wholly immaterial whether the money was converted by the purchase of a horse, or of stock on account of the embezzler, or for some other purpose of his own, and not for the benefit of the bank. The very case upon which counsel chiefly rely, *United States* vs. *Britton* (107 U. S. R., 655–669), recognizes that the term "embezzle" has a technical meaning in its use to describe offenses at common law. In that case the question was, what was the meaning of the words "willfully misapplied?" The court, Mr. Justice Woods delivering the opinion, used this language:

> The words "willfully misapplied" are, so far as we know, new in statutes creating offenses, and they are not used in describing any offense at common law. They have no settled technical meaning like the word "embezzle," as used in the statutes, or the words "steal, take, and carry away," as used at common law. They do not, therefore, of themselves fully and clearly set forth every element of the offense charged. It would not be sufficient simply to aver that the defendant "willfully misapplied" the funds of the association. This is well settled by the authorities we have already cited. There must be averments to show how the application was made, and that it was an unlawful one.

This language shows clearly that in the opinion of the court the word "embezzle" has a definite technical meaning, exactly like that of "steal, take, and carry away." It follows that, when the indictment states, first, the relation of confidence held by the accused toward the injured person; second, the reception by him of the property of the injured person by virtue of that relation;

and, third, the breach of the relation of confidence by the subsequent embezzlement and conversion of the property so received, with the necessary averments of time and place, every essential element of the crime is set forth in the indictment.

2.

The defendant was found guilty upon the first count by the jury specifically. The penalty fixed by the statute for the offense described in it is not less than five and not more than ten years' imprisonment. It will therefore sustain the sentence of six years, whether the other counts of the indictment are good or bad. The rule is that a general verdict upon several counts must be upheld if one count is good. (*Snyder* vs. *United States*, 112 U. S. R., 216; *Clifton* vs. *United States*, 4 How., 242–250; *Locke* vs. *United States*, 7 Cranch, 339–344.) The rule usually applies to counts stating the same act in different ways. In this indictment the four counts upon which the jury found the defendant guilty plainly refer to different offenses; therefore a general verdict was not taken, but a verdict on each count was taken. It follows, *a fortiori*, that, where there is a general sentence justified by any one of four special verdicts, the sentence will not be set aside unless each of the counts upon which special verdicts were rendered is bad.

The case of *Commonwealth* vs. *Railroad Company* (133 Mass., 283–291), cited by counsel on the other side, has no application whatever. In that case there were two counts to an indictment charging negligence against a railroad

company. One count was framed on the theory that less negligence was necessary to constitute the offense described in the statute than in the other count. The trial court charged the jury that both counts were good, and that if they found the evidence to sustain either, they should return a general verdict of guilty. They did return a verdict of guilty. The supreme judicial court of Massachusetts found that that count which charged the defendant with the less negligence was bad. It therefore found that, as the evidence was of such a character that the jury might have found it sufficient to sustain the bad count but not sufficient to sustain the good count, and yet returned a general verdict of guilty, under the charge of the court, the verdict could not be sustained. Here the four crimes described were entirely separate. The evidence to sustain the embezzlement could only be directed to the embezzlement. The evidence to sustain the four cases of misapplication of the funds charged in the nineteenth, twenty-first, twenty-third, and twenty-fourth counts had no bearing upon the charge of embezzlement at all, and therefore the jury could not have found the prisoner guilty of embezzlement on any evidence produced to sustain the other charges. The fact that separate verdicts were taken on each count, takes this case out of any of the classes referred to by counsel for the defendant.

3.

But the other counts are good. They are drawn under the same section (5209) which provides that every president, cashier, etc., of any national-banking association who

and, third, the breach of the relation of confidence by the subsequent embezzlement and conversion of the property so received, with the necessary averments of time and place, every essential element of the crime is set forth in the indictment.

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The defendant was found guilty upon the first count by the jury specifically. The penalty fixed by the statute for the offense described in it is not less than five and not more than ten years' imprisonment. It will therefore sustain the sentence of six years, whether the other counts of the indictment are good or bad. The rule is that a general verdict upon several counts must be upheld if one count is good. (*Snyder* vs. *United States*, 112 U. S. R., 216; *Clifton* vs. *United States*, 4 How., 242–250; *Locke* vs. *United States*, 7 Cranch, 339–344.) The rule usually applies to counts stating the same act in different ways. In this indictment the four counts upon which the jury found the defendant guilty plainly refer to different offenses; therefore a general verdict was not taken, but a verdict on each count was taken. It follows, *a fortiori*, that, where there is a general sentence justified by any one of four special verdicts, the sentence will not be set aside unless each of the counts upon which special verdicts were rendered is bad.

The case of *Commonwealth* vs. *Railroad Company* (133 Mass., 283–291), cited by counsel on the other side, has no application whatever. In that case there were two counts to an indictment charging negligence against a railroad

company. One count was framed on the theory that less negligence was necessary to constitute the offense described in the statute than in the other count. The trial court charged the jury that both counts were good, and that if they found the evidence to sustain either, they should return a general verdict of guilty. They did return a verdict of guilty. The supreme judicial court of Massachusetts found that that count which charged the defendant with the less negligence was bad. It therefore found that, as the evidence was of such a character that the jury might have found it sufficient to sustain the bad count but not sufficient to sustain the good count, and yet returned a general verdict of guilty, under the charge of the court, the verdict could not be sustained. Here the four crimes described were entirely separate. The evidence to sustain the embezzlement could only be directed to the embezzlement. The evidence to sustain the four cases of misapplication of the funds charged in the nineteenth, twenty-first, twenty-third, and twenty-fourth counts had no bearing upon the charge of embezzlement at all, and therefore the jury could not have found the prisoner guilty of embezzlement on any evidence produced to sustain the other charges. The fact that separate verdicts were taken on each count, takes this case out of any of the classes referred to by counsel for the defendant.

3.

But the other counts are good. They are drawn under the same section (5209) which provides that every president, cashier, etc., of any national-banking association who

willfully misapplies any of the moneys, funds, or credits of the association, with intent to injure or defraud the association, shall be deemed guilty of a misdemeanor, and shall be imprisoned not less than five years or more than ten. This section and this part of this section were under consideration in the case of *The United States* vs. *Britton* (107 U. S. R., 666), where the court, speaking by Mr. Justice Woods, lays down the construction of this section as follows:

> We think the willful misapplication made an offense by this statute means a misapplication for the use, benefit, or gain of the party charged, or of some company or person other than the association. Therefore, to constitute the offense of willful misapplication there must be a conversion to his own use, or the use of some one else, of the moneys and funds of the association by the party charged.

Again, on page 668:

> It must be a willful misapplication for the use or benefit of the party charged, or of some person or company other than the association, with intent to injure and defraud the association, or some other body corporate, or some natural person.

The nineteenth count charges that the defendant, while president of the Sixth National Bank of the city of New York, which was doing a banking business in that city, willfully and unlawfully, and with intent to injure and defraud the association, did misapply and convert to the the use, benefit, and advantage of one James A. Simmons funds of the association amounting to $60,000; that he did this in the following manner: That, without the knowledge

and consent of the association or its board of directors, he procured the cashier of the bank to make a cashier's check directing the bank to pay to the order of Simmons $60,000, although he, Claassen, then and there well knew that such sum was not then on deposit with the association to the credit of Simmons, and was not due to him, and the repayment thereof to the association was not then and there in any way secured; that the said Simmons had no manner of right or title to the same, and that Claassen, unlawfully devising and intending that Simmons should appropriate and convert to his own use the $60,000 out of the funds of the association, the money was thus appropriated and converted to the use of Simmons.

This indictment, therefore, charged in effect that Claassen, as president of the bank, directed the payment of $60,000 to Simmons without the knowledge or authority of the board of directors, when no such sum was owing from the bank to Simmons, when he had no right or title to the same, and when he did not in any way secure its repayment, with the intent that Simmons should convert this money of the bank to his own use, and should thereby injure and defraud the bank. Here is not a question of good security or bad security; the charge is that there was no security at all. It excludes the theory that a note was discounted. It is an averment that the money was simply paid out of the bank without any evidence of the indebtedness which could constitute any security for its repayment whatever. The averment that the repayment of the same was not in any way secured negatives any hypothesis that the money was paid out by the president, or on the order